THE TRIAL of P. W. DUFFIN,

LATE A

CAPTAIN OF THE FOURTH COMPANY IN THE VOLUNTEER REGIMENT OF IRISH BRIGADE, DUBLIN.

AND

THOMAS LLOYD,

A

CITIZEN of the UNITED STATES of AMERICA,

FOR A

SUPPOSED LIBEL.

To which is annexed,

A LETTER to THOMAS PINCKNEY,

THE AMERICAN MINISTER;

Wherein THOMAS LLOYD claims the Interference of the UNITED STATES of AMERICA, to obtain him a Satisfaction for the unparalleled Tortures, and cruel Oppressions which he has experienced under the BRITISH Government.

Non vultus instantis Tyranni,
Mente quatit solida: neque Auster
Dux inquieti turbidus Adriæ,
Nec fulminantis magna Jovis manus.

HOR. LIB. iii. ODE 3.

A soul well settled is not to be shook,
With an incens'd Tyrant's threat'ning look:
It unconcern'd can hear the tempest roar,
And raging ocean lash the thund'ring shore:
Not the uplifted hand of mighty Jove,
Tho' charged with light'ning such a mind can move.

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TRIAL, &c.

THE KING

AGAINST

Patrick William Duffin and *Thomas Lloyd.*

AT the ſittings of Niſi Prius, held at Guildhall, for the City of London, December 17th, 1792; before Lord Chief Juſtice KENYON, and a ſpecial Jury. The Jury conſiſted of the following perſons:

SAMUEL HOUSE, of Size-lane.
JONATHAN DELVER, Fell-ſtreet.
RICHARD MONTFORD, Lad-lane.
MICHAEL HEATHCOT, Milk-ſtreet.
WILLIAM HARRIMAN, Allhallow-lane.
ISAAC OSBORN, Laurence-Poultney-hill.
BENJAMIN BICKERSTON, Jewin-ſtreet.
BENJAMIN LUTHINS, Copper-Office-lane.
And Four taleſmen.

The information, filed *ex officio* by the Attorney General, was read by the Clerk, and ſtated, that Patrick William Duffin and Thomas Lloyd were wicked, ſeditious, and ill-diſpoſed perſons, and greatly diſaffected to the king, and the government and conſtitution of this kingdon; and with force and arms did unlawfully and wickedly conſpire, combine, confederate, and agree together to eſcape and go at large out of the Fleet priſon; and to excite and ſtir up divers other priſoners to break open the ſaid priſon, and alſo to eſcape *and go at large out of the ſaid priſon*;—In purſuance of the ſaid unlawful and ſeditious conſpiracy, combination, confederacy and agreement, and with intent to carry the ſame into effect, afterward, did, unlawfully and wick-

edly, fix and put up, and cauſed to be fixed and put up, on the door of the Chapel of the ſaid priſon, and thereby publiſhed and cauſed to be publiſhed, an infamous, wicked, and ſeditious libel, concerning the ſaid priſon, and the government of this kingdom, according to the tenor and effect following; viz. This houſe (meaning the ſaid priſon) to let, peaceable poſſeſſion will be given by the preſent tenants on or before the 1ſt day of January, 1793, being the commencement of the firſt year of liberty in Great Britain!!! The republic of France having rooted out deſpotiſm, their glorious example and ſucceſs againſt tyrants renders infamous baſtiles (meaning amongſt other priſons, the ſaid priſon of the Fleet) no longer neceſſary in Europe.—In contempt of the king, and open violation of the laws of this kingdom, to the great obſtruction of juſtice, to the evil and pernicious example of all others, in the like caſe offending, and againſt the peace of the king, his crown and dignity.

Second Count.——That being ſuch perſons as aforeſaid, they did unlawfully, wickedly, and ſeditiouſly deviſing, contriving, and intending to excite and ſtir up divers priſoners to break open the ſaid priſon, and to eſcape *and go at large* with force and arms in the Fleet priſon, wickedly, maliciouſly publiſhed and cauſed to be publiſhed, a wicked, infamous, and ſeditious libel. This houſe (meaning the ſaid priſon) to let, &c. as before charged in the firſt count.

Mr. *Bearcroft* ſaid, that he appeared on the part of the proſecution, in the abſence of the Attorney General, againſt the two defendants, Duffin and Lloyd. You know, gentlemen of the Jury, that the charges againſt the defendants, are for conſpiring and agreeing to eſcape out of the Fleet priſon, where they were legally confined for debt; and that they excited other priſoners to effect their eſcape likewiſe. In purſuance of which conſpiracy and agreement, and in order to effect the ſame, they paſted up in the priſon a ſeditious libel. If, gentlemen, there ſhould not appear ſufficient evidence to prove that they conſpired to eſcape, and liberate the others, there is a ſecond and ſeparate charge, omitting the charge of conſpiracy, and confining the crime to the publication of the libel only, on which point you can have no doubt, after hearing the evidence I ſhall adduce.

I ſhall take up very little of your time in ſtating this caſe, or enlarging on the criminality of ſuch offences as thoſe with which they ſtand charged; eſpecially as I underſtand that they are to be their own advocates, not having employed any perſon on their behalf. I ſhall therefore reſt the proſecution upon the evidence of two or three witneſſes; by their teſtimony you will find the charges well ſupported. It will be found, that Duffin and Lloyd were lawfully confined in the Fleet priſon; and it will be in proof, that Lloyd was ſeen writing the libel, which was ſeen afterwards paſted up in the priſon. And it will be further

proved,

proved, that Duffin was the perſon who actually paſted the libels up: Lloyd was alſo heard to read it aloud, and thereby publiſhed it to many byſtanders. That upon Lloyd's being interrogated and charged with the fact, he did not heſitate to juſtify it, but even gloried in the ſentiments the libel contained; this will alſo be in proof; and if I underſtand the evidence aright, it will amount at leaſt to this, that the publication was the joint act of both the defendants.

As to the object of that paper I ſhall ſay nothing more, than only to beg you to be ſo good as to hear it read, and then ſee whether it does not clearly extend to juſtify the conſtructions as they are charged.—The words are:

"This houſe to let; peaceable poſſeſſion will be given by "the preſent tenants, on or before the firſt day of January, "1793, being the commencement of the firſt year of Liberty "in Great Britain.

"The republic of France, having rooted out deſpotiſm, their "glorious example and ſucceſs againſt Tyrants, renders infa-"mous baſtiles no longer neceſſary in Europe."

The meaning of this paper is too plain, to render it neceſſary for me to enter into any explanation thereof, before gentlemen of ſuch reſpectability and underſtanding as thoſe whom I have the honour to addreſs; indeed it would be utterly impoſſible to affix to it any other meaning than that charged in the information.

WILLIAM JEFFERIES *was called, and ſworn.*

He proved that the commitments of the defendants were ſigned by Juſtice Gould.

Mr. *Bearcroft* ſaid, this witneſs proved the legality of their impriſonment; but this evidence was no more than mere matter of form.

THOMAS HOSKINS *was next called, and ſworn.*

Mr. *Duffin* objected to this witneſs, as Hoſkins was one of the under turnkeys of the Fleet priſon, and as a ſervant of Mr. Eyles's, he might be ſuſpected of partiality.

The Judge anſwered, That the objection was inſufficient; ſervants were admiſſible witneſſes; the Engliſh law excluded none but men's wives and intereſted perſons. If the defendant had any other ground of objection to take, it ſhould be heard, and every juſtice done which the peculiarity of the caſe required.

One of the *Counſel*, holding *a quarter of a ſheet of paper* in his hand, ſaid to Hoſkins, Look at this paper; did you ever ſee it before?

Hoſkins took it in his hand, and anſwered, Yes.

Counſel. When?

Hoſkins. I ſaw it on the 28th of laſt October, when Mr. Duffin came down the ſteps of the north door of the Fleet priſon, on Sunday afternoon, with that paper in his hand, and he went from there up the ſteps to the Chapel-door, which is at that end of the priſon that he came from; when he got to the door of the Chapel he ſtuck that paper upon it.

Counſel. Did you take it down?

Hoſkins. Yes; it appeared to be ſtuck on with ſize or paſte. I kept the paper in my poſſeſſion till the evening, and then I gave it to the warden.

The Judge told the defendents they might now aſk the witneſs any queſtions that they had to put to him.

Mr. *Duffin* thanked his Lordſhip for the information, and proceeded to aſk Hoſkins, Do you recollect my being confined in the ſtrong room?

Hoſkins. Yes, very well.

Do you recollect of any enquiry made either of the warden or among the turnkeys, from the Secretary of State's office, or by the Attorney General, in conſequence of a letter I wrote to the Secretary of State?

No, ſir; I do not know of any.

Had you orders to prevent all intercourſe with me, and to let nobody into the room to me, nor open the door but three times a day?

Yes.

Did you not hear of my loud and frequent complaints reſpecting the oppreſſions of the officers of the priſon?

I know of no oppreſſions carried on there.

Mr. *Lloyd* aſked Hoſkins if he knew of two gentlemen of the law, who called to ſee him, being refuſed even admittance into the priſon, at any time while he was confined in the ſtrong room?

Hoſkins. No; I know nothing of the matter.

Lloyd. I believe it was not you, it was one Shott, another of the turnkeys. Pray do you know is Mr. Shott in Court?

No, I believe not.

JOHN EYLES, *Warden of the Fleet Priſon, was next ſworn.*

One of the *Counſel* ſaid, Had you any converſation with Mr. Lloyd about this tranſaction? What was it, and when was it?

Eyles. I do not recollect the day, but I think it was two or three days after the papers had been paſted up; it was the 31ſt of October.

Counſel. Tell that converſation.

Eyles. I ſent for him down to the lodge, and I told him I wiſhed to talk to him, in order to diſcourage him from ſeeking a reform

a reform in the government. He then entered into arguments tending to defend his tenets.

Counſel. What did he ſay about the hand-bills?

Eyles. After talking about the hand-bills, we went into a long converſation, and he told me *to take notice, that he did not admit the hand-bills were his;* but from the converſation I thought he admitted it in ſo many words, after having argued on the propriety of the hand-bills, and the doctrine laid down in them.

Counſel. Did you charge him with being concerned in them?

Eyles. Yes, I did.—I told him how dangerous theſe things were, and to what conſequences they might lead; they might bring about the moſt horrid ſcenes of plunder, bloodſhed, and murder. He ſaid that he thought otherwiſe, that a reform might be brought about without them. It was in private that I ſaid this. He ſaid he could not be convinced, and that his ideas were different from mine. I told him then, that he muſt go to the place called the ſtrong room, as a puniſhment to deter others, that they might not be drawn away by his example. He ſaid he was glad of it, and thought I could not do otherwiſe.—He ſaid ſuch meaſures might bring the conteſt to a point, or to a criſis, or ſome ſuch like expreſſion. He ſaid that we underſtood one another, but I don't know what he meant. There was a good deal more converſation, but I do not recollect it.

Mr. *Lloyd* then ſaid to Mr. Eyles, he would endeavour to aſſiſt his recollection, which appeared to him to be a very weak one. Perhaps when I jog your memory, you will remember, ſaid he, that on my coming into the room where you was, you told me that you was convinced I was the writer and publiſher of a paper then laying on your deſk, and therefore you did not mean to make of me any enquiry whether I wrote it or not, but as a puniſhment, ordered me to the ſtrong room. That I aſked you whether this order was to inflict a puniſhment, and whether I was to be inhumanly treated on this account? That you anſwered, No. That I then reminded you, that as I had no friend preſent to witneſs a converſation I wiſhed to have with you, I requeſted, if you accorded with this wiſh, that you might order your gang of turnkeys out of the place.

Eyles. I remember we were left alone, but I did not refuſe to enquire of you whether you was concerned in the hand-bills.

Lloyd. Your memory is too ſhort for me, I have therefore done with you.

Mr. *Duffin.* Pray Mr. Eyles did you ever hear that either Mr. Lloyd or me intended to eſcape from the priſon?

Eyles. No, I never heard ſo.

Duffin. Or that we excited others to eſcape, or break the priſon?

Eyles. No.

Duffin. Did you think yourſelf that we, or any of the priſoners, ever contemplated ſuch a meaſure?

Eyles. No otherwiſe than as I inferred from the hand-bills which had been ſtuck up, I thought the paper might have that tendency.

Duffin. Did you ever hear that I complained of impoſitions and abuſes, practiſed by your ſervants in the Fleet priſon?

Eyles. I did.

Duffin. And did you not hear I intended to complain to the Court of ſuch impoſitions?

Eyles. I did not hear that.

Duffin. Do not you uſually commit any perſon to the ſtrong room under ſome flimſy pretence, who has ſpirit enough to reſiſt your impoſitions?

Eyles. I never confine any perſon in the ſtrong room without cauſe.

Duffin. Was not a gentleman murdered by your confining him in the ſtrong room within theſe three years, and the cruelty of the treatment he received there?

The Judge told Mr. Duffin his queſtion was an improper one; that no man would be allowed by the laws of England to give teſtimony to criminate himſelf.

Mr. *Duffin* ſaid, he did not wiſh to perſiſt, if his Lordſhip thought the queſtion unanſwerable.

MICHAEL SCHOOLE *was called, and ſworn.*

One of the *Counſel* ſaid, You were a priſoner in the Fleet; you remember Duffin there; he had a part of your room, had he not?

Schoole. Yes.

Counſel. Do you know of a club that was eſtabliſhed there, and that Duffin and Lloyd belonged to it?

Schoole. No, I do not; I heard there was a club.

Counſel. Did you belong to it?

Schoole. No.

Counſel. Do you know who did?

Schoole. No, I cannot ſay I do.—Seeing that I am called here,

here, and I never was in a more diſagreeable ſituation in my life, I will go on, and ſtate all I know of this buſineſs: I remember Mr. Lloyd came into our room, or rather I ſaw him there.

Counſel. What was he doing when you ſaw him there?

Schoole. If the gentlemen pleaſe I will go on to ſtate all I know of the matter.

The Judge then ſaid, do ſo, Mr. Schoole; but we know that you have not come here voluntarily.

Schoole. It was on Sunday, the 28th of October, I had the misfortue to come into my own room, and there I ſaw Mr. Lloyd writing a paper at my table; the writing was a feigned hand, and out of the common way, and therefore made it more noticeable. I ſaw it afterwards paſted up in the Coffee Gallery in the priſon.

One of the *Counſel* then took up *a whole ſheet of paper*, ornamented with feſtoons, the writing on which was in a large bold round hand, and handed it to Schoole, aſking whether that was the paper?

Schoole, having it in his hand, ſaid, *I believe this to be the ſame paper, but I am not poſitive*, but I really think it is the ſame, the paper *was not finiſhed when I ſaw Mr. Lloyd writing it*; but I ſaw it afterwards, and I believe it is the ſame.

Counſel. Did not you hear it read aloud by Lloyd?

Schoole. Yes; I heard him read it when it was ſtuck up by the Coffee-room door: there were a great number of perſons there; and I heard ſeveral others as well as Mr. Lloyd read it aloud alſo.

Mr. *Lloyd* aſked the witneſs, What time it was when he ſaw him writing that paper; whether it was not dark?

Schoole. No, it was not dark, for there was no candle alight.

Lloyd. Was it not late in the evening, and at leaſt three or four hours after the ſmall hand-bills had been ſtuck up?

Schoole Yes, it was ſome hours after that one on the Chapel-door had been taken down.

One of the *Counſel* then put the ſmall hand-bill, which Hoſkins ſwore he ſaw Duffin put up on the Chapel-door, into Mr. Schoole's hands, and aſked him if he did not think that was Lloyd's writing?

Schoole ſaid, No; I do not know; I rather think it is not.

Mr. *Lloyd.* It was only a copy then you ſaw me taking?

Schoole. I do not know; I ſaid I only *believed* the other one to be the paper you was writing, and that I *cannot be poſitive* it is the ſame.

Mr. *Duffin.* Did you not ſee a great many other perſons take copies of the bills that evening?

Schoole. Yes; a great many.

Mr. *Bearcroft* obſerved to the Jury, that the papers were duplicates, and that the charge laid in the information contained a *verbatim et literatim* copy of the ſame.

Mr. *Duffin* being called upon to make his defence, ſtated the proſecution to be unfounded and malicious; and calculated only to protect and perpetuate the abuſes and oppreſſions of one of the officers of a court of juſtice, the warden of the Fleet priſon; it was not inſtituted, until that officer feared for his own ſafety; nor dare he even then, lay the ſubject before a Grand Jury, which at that time was ſitting. No, it was managed by the Attorney General by way of information, a relic of the deteſtable Court of Star Chamber, under an impreſſion, as he apprehended, that no Grand Jury could be found baſe enough to countenance ſuch a frivolous and vexatious proſecution.

The paper charged againſt him was made public on the 28th of October, but was not noticed by the warden till the 31ſt of the ſame month, who then cloſely confined him for twenty-two days. On the 10th of November, however, he applied to the Secretary of State to enquire into and redreſs his wrongs; it was nothing but the fear of an attack that made the warden then come forward. He conjured his Lordſhip (if in his power) or the parliament, to reſtrain the keepers of goals, from inflicting puniſhment on priſoners at their own diſcretion, a power they greatly abuſed; and hoped the Jury would this day by their verdict, diſcountenance for ever, ſuch infamous and oppreſſive proſecutions as the preſent. To ſhew that the warden was induced to act in conſequence of his letter, he begged of his lordſhip permiſſion to read it, which was as follow:

To the SECRETARY of STATE.

"When *injuſtice* is rendered in the caſe of an individual, without even the ſanction of law, by the officers of a court of judicature, it is in vain to *apply for redreſs* or ſatisfaction to the *officers of that court*; becauſe (as is too well known to render particular proof neceſſary) all the officers of ſuch court incline to ſupport each other, eſpecially if the practice complained of ſhould be one of thoſe which their habits have rendered familiar to them. They are too much diſpoſed to countenance a

cuſtom,

cuſtom, under the idea of its forming part of the common law; but a cuſtom can never become part of the common law of England, if it is a violation of the fundamental principles of ethics; nor can it be part of ſuch law if it violates the princip'es acknowledged by Magna Charta, or the Bill of Rights; nay, even an *act of Parliament* cannot eſtabliſh a regulation infringent or ſubverſive of that principle.

"Now, it is a right ſtrictly natural, that every perſon have the liberty which conſiſts in the power of *loco motion*, of changing ſituation, or moving one's ſelf to whatever place one's inclination may direct; and it is declared and enacted by Magna Charta, the Petition of Rights, &c. that no man ſhall be taken, *impriſoned, or detained*, by SUGGESTION, or petition, or WITHOUT CAUSE SHEWN, to which he may anſwer according to law. Hence it reſults, that this right can never be abridged at the mere diſcretion of the magiſtrate, nay not even *the chief* executive officer; for if once it was left in the power of any, there would ſoon be an end to all other rights and immunities. Yet it has ſo happened, that the *diſcretion* of the warden of the priſon of the court of Common Pleas has, upon *ſuggeſtion*, WITHOUT CAUSE SHEWN, confined me in the *ſtrong cell* of that jail, and expoſed me to every inconvenience and hardſhip incidental to ſuch confinement; *refuſing* to furniſh any convenience or neceſſary to preſerve life or health, in a *diſmal vaulted cell, flagged with ſtone*; and this not being thought puniſhment enough, I am debarred of all intercourſe with my friends."

"Thus circumſtanced, I CALL UPON YOU, as the ſuperintendant of the execution of the municipal laws, to ENQUIRE INTO, and REDRESS THE EVIL; to this end I ſubjoin a ſtatement of the caſe.—About ſix weeks ago I was committed to the Fleet priſon for a debt of £. 500, charged on *the oath of a man I never knew*, nor could I learn where he lives, or if ſuch a man exiſts, though I applied for that purpoſe to his attorney, *George Croſsley*. Being thus deprived of the deareſt bleſſing, *liberty*, through the medium of PERJURY, and confined in this *manſion of the oppreſſed*, it happened, that on Sunday the 28th of October laſt a written paper, of the following purport, was ſtuck up on the walls [The ſame as charged in the information]. On the Wedneſday following I was ordered by the warden to be *cloſe confined* to my room, on *ſuſpicion* of having publiſhed the above. There I continued locked up, with an iron bar acroſs my door, until Friday evening laſt, when, at a late hour, I was removed to a CELL, called the ſtrong room, without an opportunity of accommodating myſelf (even at my own charge) with a bed or other conveniency. In that cell I found an American gentleman, who had then been confined there ten days *on the*

like

like ſuſpicion. He appeared to be badly accommodated; notwithſtanding, yeſterday evening an under turnkey ſtripped the cell of every article he had had therein, not leaving a jug for water, or even an urinal. In this ſituation we are now locked up together, and ſo compleatly excluded from ſociety, that we may periſh without it ever being known to our friends or relatives what has befallen us. A detail of the cruelties inflicted on us would pang the heart of humanity, and ROUSE THE INDIGNATION OF THE COMMUNITY, eſpecially as ſuch puniſhments are ILLEGAL, and tend to BRAND WITH INFAMY the nation which *permits*, or CONNIVES, at ſuch enormities.

PATRICK WILLIAM DUFFIN,
formerly of the city of Dublin, now
of Piccadilly, London.

Dated from the ſtrong
cell in the Fleet pri-
ſon, 10th November,
1792, at night.

To the Secretary of State for the Home Department.

Mr. LLOYD being now called upon by the Judge to make his defence, entered upon is as follows:

THE enormous expence attending the conduct of a ſuit at law in this country, has deterred me, under my preſent embarraſed circumſtances, from attempting to engage, either attorney, ſolicitor or counſel in my behalf: I am therefore, left alone, to ſupport myſelf againſt diſciplined veterans of the bar, and to ſubmit the determination of my defeat or victory, to the judgment of a court, perhaps unuſed to decide upon, or even to liſten to, arguments bottomed ſolely upon the pure principles of diſtrubutive juſtice, without a particular alluſion to municipal regulations: ſtanding in this predicament, I enter upon the arduous taſk with conſcious diffidence, and while I claim the patient indulgence of the Court, I entertain a hope, that you will rather aid, than obſtruct, the operation of my reaſoning on the minds of the gentlemen, who are ſelected to *verify* the *truth* of the information recently given to the Court, or to *falſify*, what I am perſuaded, the *Attorney General is incapable of proving.*

I am well appriſed, that it is the duty of the Judge, to ſtate and interpret the law, in caſes were it is not clearly underſtood by the Jury; but I truſt a diſcerning Jury will not conſent implicitly to receive any doctrine as the Law of England, though pronounced to be ſuch, by magiſtrates of the moſt reſpectability,

ſpectability, if they find it to be in *direct violation* of the very *firſt principles of natural law and Engliſh juriſprudence.* It is notorious, that the interpretations of Judges have been frequently erroneous, and the recent inſtance of Mr. Fox's libel bill, points out a particular caſe, in which the legiſlature were obliged to interfere for the purpoſe of *altering* and *correcting a practice introduced extrajuridically.*—And although when I was brought up on the ſudden to plead to an information, after twenty-two days cloſe confinement in the ſtrong room of the Fleet priſon, I was told by the Judge, that my opinion on the ſubject of admitting me to bail, which bail I then offered, and had then preſent in Court, would weigh as a feather in his mind. Yet I have now the pleaſure to find that on a particular examination a Jury, and not the Judge of the Court, will ultimately determine on the caſe before them; and then will be ſeen whether his opinion or mine, on the nature, principles, and conſtruction of the law, be moſt compatible with the declarations of the law itſelf.

And here I have to expreſs a deſire, that my words may be taken in their moſt favorable ſenſe, and not tortured into a contempt of the Court; for I once for all declare, that nothing is more foreign from my intentions, although my language may ſeem to bear with ſome aſperity, not only on thoſe who have adminiſtered the law, but on *practices*, which have been long conſidered and acted upon, as if they had formed part of the *legal code* of this nation.

In order to abate any ſurprize which this declaration, or my ſubſequent arguments may occaſion, I conſider it requiſite to ſtate briefly, That I am a citizen of the United States of America; and here permit to digreſs a moment, in order to mention a ſtep which I had intended to have taken on my trial, but which I apprehend I am now precluded from: when I was brought by a *Habeas Corpus* to the Crown Office on the third inſtant, to be preſent at nominating the ſpecial jury, I ſtated to the Treaſury Solicitor and Attorney, my objection to a Jury of this nature, and informed them that being an alien, I would claim a Jury *de medietate linguae*, in order to have a queſtion decided by the Court, how far ſpecial Juries could be granted in caſes where an alien is a party; to ſhew that this was a queſtion undecided I ſhall read an extract from 3 Black. p. 360, 361.

" The array by the antient law may alſo be challenged, if an alien be party to the ſuit; and, upon a rule obtained by his motion to the court for a jury *de medietate linguae*, ſuch a one be not returned by the ſheriff, purſuant to the ſtatute 28 Edward III. c. 13. enforced by 8 Hen. VI. c. 29. which enact, that where either party is an alien born the jury ſhall be one half denizens, and the other aliens, (if ſo many be forthcoming in the place), for the more impartial trial. A privilege indulged to ſtrangers in no other country in the world; but which is as

antient

antient with us as the time of King Ethelred, in whoſe ſtatute *de monticolis Walliae*, (then aliens to the crown of England), *cap* 3. it is ordained, that "*duodeni legales homines, quorum ſex Walli* "*et ſex Angli erunt, Anglis et Wallis jus dicunto.*" But where both parties are aliens, no partiality is to be preſumed to one more than another; and therefore it was reſolved, ſoon after the ſtatute 8 Hen. VI. that where the iſſue is joined between two aliens, (unleſs the plea be had before the mayor of the ſtaple, and thereby ſubject to the reſtrictions of ſtatute 27 Edw. III. ſt. 2. c. 8. the jury ſhall all be denizens. And it now might be a queſtion how far the ſtatute 3 Geo. II. c. 25. (before refered to) hath, in civil cauſes, undeſignedly abridged this privilege of foreigners, by the poſitive directions therein given concerning the manner of impanelling jurors, and the perſons to be returned in ſuch panel. So that (unleſs this ſtatute is to be conſtrued by the ſame equity, which the ſtatute 8 Hen. VI. c. 29. declared to be the rule of interpreting the ſtatute 2 Hen. V. ſt. 2. c. 3. concerning the landed qualification of jurors in ſuits to which aliens were parties) a court might perhaps heſitate, whether it has now a power to direct a panel to be returned *de medietate linguae*, and thereby alter the method preſcribed for ſtriking a ſpecial jury, or balloting for common jurors.

The Judge here informed Mr. Lloyd, that the time was paſſed in which he might have made that claim: and Mr. Lloyd proceeded.—He ſaid he had ſuſpected as much; he ſhould therefore quit the ſubject with juſt adding, that unuſed to the practice of courts of juſtice, he was taken unaware by the rapidity of the officer who ſwore in and impannelled the Jury, which was begun and nearly ended before he was well in his place.

But to return. I had ſtated, ſaid he, that I am a citizen of the United States, and was called, laſt winter, on a family occaſion to London from Philadelphia;—ſome diſappointments and unexpected expences, rendered me incapable of diſcharging, on the moment of demand, two debts I had contracted; on which account being arreſted, I removed myſelf for my better accomodation to the Fleet priſon (after waiting fifteen or ſixteen days, in laſt September, for the arrival of a Judge in town). My conduct there, as well as in every other ſituation of life, has been ſuch as not to furniſh an occaſion for a bluſh in my countenance; if at any time I have given pain to thoſe who knew me, I may regret the effect, but I am certain I can juſtify the cauſe. In the information laid by the Attorney General, I am ſtated to be a perſon greatly diſaffected to a monarchial government, and to the conſtitution of this country; with reſpect to the Britiſh Conſtitution, I ſhall ſtate a few ideas, when I come to that part of my arguments where I conſider they will beſt apply; but as for my want of attachment to monarchy, it ought never

never to be imputed to me as a crime; from my early youth I have been trained in republican principles, and my manhood has been employed in procuring their eſtabliſhment in regions more extenſive than any European kingdom; and the event has ſhewn, in contradiction to the opinion of even the great Monteſquieu, that it is not the *natural property* of large empires to be ſwayed by a deſpotic prince, for an American government, which is a republic on the principle of repreſentation, it was neceſſary to form calculations on a ſcale commenſurate to a large portion of the globe; yet you will find individual happineſs and national proſperity, better promoted by ſuch a ſyſtem of government in that nation, than we are capable of diſcovering to have been the caſe in any other country, from hiſtoric reſearch or viſual inſpection. If the charge is ſimply diſaffection to the king, or in other words, a want of zeal for his ſervice, there appears nothing proved under the information to convict me thereof.

With reſpect to the crime, as it is termed by the Attorney General, in the underſtanding he took upon himſelf to give to the Court of King's Bench, on the 21ſt ultimo, I have little to ſay, and that little I ſhall wave for the preſent, with only this remark, that conſcious of never having written or paſted up, the jeu d' eſprit complained of, in anywiſe, or as charged againſt me; and conſcious that I never contemplated an eſcape from the Fleet priſon, or ever ſuggeſted ſuch a meaſure for the benefit of the other priſoners. I have hitherto been at a loſs to conceive what evidence was intended to be adduced in ſupport of ſuch abominable falſhoods; under this perplexity it may readily be ſuppoſed, that I am not prepared with teſtimony to rebut what has been brought before you by the proſecutor, nor do I believe, now I have heard it, that any will be neceſſary.

But now, for argument ſake, taking it for granted, that I had intended to eſcape and break down the walls of that priſon, which are forty feet high, and mounted at top with iron rolling *chevaux de frize*, and ſix feet thick, with force and arms, and in purſuance of this terribly wicked intention, I had ſtuck up the ſeditious paſquinade alledged againſt me, I think I can demonſtrate that I was warranted to purſue ſuch object to effect, without its being imputed to me as a crime. To accompliſh this end, I ſolicit your particular attention to the arguments I am about to urge; hoping, for your own honour and juſtification, that you will weigh them with care and candour, and by your verdict determine their cogency and concluſiveneſs.

[Here one of the Jurors interrupted Mr. Lloyd with ſaying, that the Jury was bound by oath to determine. Mr. Lloyd replied, that he had as lieve appeal to the virtue

virtue and honour of a man of integrity as to his oath. It was on this account that he had preferred the phraseology which the gentleman remarked upon.]

The firſt thing which I mean to ſubmit to your conſideration is, any enquiry into the *juſtice*, conſtitutionality, and legality of impriſonment for debt. If ſuch impriſonment ſhould appear to you unwarranted by the law of nature, the Engliſh conſtitution, and the municipal laws, you will undoubtedly conclude with me, that it is ſuch an act of oppreſſion, as to authorize, nay to require, reſiſtance on the part of thoſe who are ſo *unjuſtifiably* immured within the walls of priſons, more gloomy than were the ci-devant baſtilles of the grand monarque.

Before I enter upon my argument on this ſubject, I would wiſh to ſatisfy the Court, that I am not alone in the opinions I entertain; as they may diſcover, upon attending to the judgement of ſeven of Queen Anne's Judges, delivered by Chief Juſtice Holt.

"If *one* be impriſoned upon unlawful authority, it is a ſuffi-"cient provocation to excuſe even homicide, and *all people*, "out of compaſſion, *ought to aid therein*, much more ſo when "it is done *under colour of juſtice:* And when the liberty "of the ſubject is invaded, it is a provocation to all the ſub-"jects of England. A man ought to be concerned for Magna "Charta and the laws; and if any one againſt law impriſon a "man, he is an offender againſt Magna Charta."

I hope to make it appear, upon examination, that impriſonment for debt, is not only unjuſtifiable, but that it is a *crime* againſt the natural, impreſcriptable, and unalienable rights of man; and in Great Britain, a *crime* alſo againſt what is called the great charter of Engliſh liberty, as well as againſt many other ſubſequent ſtatutes, obtained in order the better to ſecure the liberties and privileges of the inhabitants againſt the encroachments of monarchs, who pretended to govern the nation by the right of conqueſt.

In order to ſhew that impriſonment for debt is a *crime* againſt the unalienable rights of man, permit me to ſtate, as an axiom ſelf evident, that "The end of all aſſociations is the preſerva-"tion of the natural and impreſcriptable rights of man: and "thoſe rights are, liberty, property, ſecurity, and reſiſtance "of oppreſſion." Perſonal liberty, the deareſt bleſſing which the Creator has beſtowed upon mankind, made inherent in us by birth, when we were endued with the faculty of free will, conſiſts "in the power of removing one's perſon to what-"ever place one's inclination may direct." It is a right annexed to the perſon of man, and cannot be parted with, even by one's own conſent, while man is conſidered a free agent, endowed with diſcernment to know good from evil, and with the

power

power of chooſing thoſe meaſures which appear to him to be the moſt deſirable.

It is true, that every man when he enters into ſociety, gives up a part of his natural liberty, in order to ſecure to himſelf, the remainder of thoſe abſolute rights, which were veſted in him by the immutable laws of nature, and which could not be preſerved in peace without that mutual aſſiſtance and intercourſe, which is gained by the inſtitution of friendly and ſocial communities: but then it is equally true, *that he parts with no more of his natural liberty, than is ſufficient to attain that end.* While this maxim is kept in mind, the acts of the legiſlative, judicial and executive powers of government, will be capable of being compared with the end of the political inſtitution.

A celebrated commentator on the laws of England aſſerts upon this ground, and very juſtly, "*That perſonal liberty, is a natural,* "*inherent right, which cannot be ſurrendered or forfeited, unleſs by* "*the commiſſion of ſome great and atrocious crime.*" This being another ſelf-evident propoſition, requires no elucidation.—It follows then as a natural conſequence, that unleſs the circumſtance of owing a ſum of money, *be a great and atrocious crime,* one's perſonal liberty cannot be ſurrendered or forfeited for it.

The law cannot authoriſe impriſonment on any other account than that of criminality in the party—nor ought perſonal liberty to be abridged even in the caſe of crimes, without the ſpecial and previous permiſſion of the municipal law.—It is not, however, intended to contend, that an abſolute exemption from impriſonment in all caſes of debt is proper, for it is admitted, that ſuch an exemption may be inconſiſtent with political ſociety, as it might deſtroy civil liberty, by rendering its protection incomplete. But it is contended, that perſonal liberty, ought never to be abridged for a debt contracted, unleſs the contract was obtained by fraud or force, which being a crime againſt civil liberty, is of courſe puniſhable by impriſonment.

In order to underſtand what is here meant by civil liberty, it may be proper to inſert the diſinition of the term as it is given by the writers on the law of nature and of nations. "It is no "other than natural liberty, ſo far reſtrained by human laws "(and no farther) as is neceſſary and expedient for the general "advantage of the public."

The queſtion now becomes ſerious and important.

Is the impriſonment of a debtor, who has become ſuch, in conſequence of a debt contracted without fraud or force? or, in other words, *Is the impriſonment of a perſon neither charged with or convicted of a crime*—neceſſary and expedient for the general advantage of the community?

In conſequence of ſome ſevere ſtrictures, recently made by the Attorney General, before the Court of King's Bench, at Weſtminſter-hall, at the laſt trial at Bar, on the conduct of debtors, as well

well as in ſupport of the ground I have taken, it will be proper to ſhew, that they are not to be claſſed among the moſt vicious and abandoned part of our ſpecies, as was attempted to be inſinuated: they are not to be conſidered as public robbers or pick-pockets! In ſhort, a debt contracted without fraud, attaches no greater crime to the debtor, who unfortunately is rendered incapable of diſcharging it, than to the creditor is attached a crime on account of his unguarded confidence.

In ſupport of this opinion, I refer to the bankrupt laws of this nation; to what is called the Lords Act; to the frequent acts of inſolvency which have been paſſed by the legiſlature; to the charitable ſocieties, inſtituted for the relief of inſolvent debtors, and to popular opinion.

The reaſon aſſigned for the proviſion made in favour of a debtor by the bankrupt laws, is, that "*Trade cannot be carried "on without mutual credit on both ſides: the contracting of debts is "therefore here, not only juſtifiable but neceſſary.*" Now let me aſk, Can any of the affairs of men in this age be carried on without mutual credit? Look around you, gentlemen, amidſt the infinite variety of mutual and reciprocal dependencies, which you diſcover in every ſituation of life; ſelect me one caſe where the fair contraction of a debt requires juſtification?—No one is to be found, for mutual credit is by common conſent declared to be neceſſary! and as every man of us may be liable to the preſſure of unforeſeen calamities, ſhall misfortunes be deemed crimes in thoſe who are already borne down to the earth, by their accumulated weight.

The principle of the Lords Act, is preciſely the ſame as that on which the bankrupt laws are founded; notwithſtanding the abſurdity of the clauſe, which declares, that every man has a right, at the expence of 2s. 4d. per week, to gratify a vicious propenſity, by the impriſonment of his debtor, thus enabling a ſpiteful, diſhoneſt, or deſigning individual, to defeat a law enacted on humane principles.

By acts of inſolvency, the legiſlature has frequently declared its concurrence, with the ſenſe I have pointed out, to be the juſt one annexed to the bankrupt and Lords Acts (twenty-four acts of inſolvency have paſſed ſince Charles II. time, making on the average one for every four and a half years) theſe meaſures have been dictated by motives either of mercy or juſtice; mercy cannot be extended by the legiſlature but to criminal caſes; *acts of mercy, are the public pardon of public crimes, but debtors have never been accuſed of, tried for, or convicted of a crime.* As acts of juſtice they have not been conſidered by the parliament, becauſe it would be inconſiſtent in them; for then they muſt allow, that all practices of impriſoning debtors, were acts of high injuſtice and oppreſſion, and ought in future to be prevented by legiſlative interference, which that body has not lately attempted to do;

do; the community are ſtill to be oppreſſed, are ſtill to be inſulted with the occaſional diſplay of what are termed acts of mercy, where it has a right to the juſtice of the legiſlature.

The popular opinion is notorious, from a variety of circumſtances; but gentlemen may think that popular opinion is of little importance; yet I venture to aſſure them, that all laws not founded in popular opinion, in this enlightened period, are little likely to be ſupported and carried into full effect. In all caſes of popular commotion in this as well as other countries, one of the firſt attempts made in order to redreſs the people's wrongs, is the liberation of debtors from the public priſons; and here permit me to obſerve, that the firſt act of inſolvency was paſſed when England became a commonwealth, after the execution of Charles the 1ſt. The people are alſo ever inclined to mitigate and remove the hardſhips of impriſonment for debt, by entering into ſocieties, and furniſhing money for thoſe purpoſes. There muſt be ſomething wrong in the adminiſtration of a government, when the deliberate collected charity of humane aſſociations is ſeen making efforts to raiſe up—not a fallen individual, but a whole body of men, whom the adminiſtrators of the law have cauſed to be thrown down. Nothing can be more convincing than this circumſtance; that debtors confined in priſons are conſidered by all men, as perſons ſuffering unjuſtly; that they are not viewed as criminals, but as unfortunates.—A robber, a pickpocket, under the ſentence of the law, may meet with compaſſion as an individual, but no meaſures have yet been taken, in conſequence of the collective ſenſe of the community of the injuſtice done them, to abridge the rigor of the law in reſpect to the whole gang; but the mitigation of the puniſhment of debtors is contemplated by the whole ſociety of the people, and intended to affect the whole body of thoſe unhappy men, who are left to the mercy of individuals, to atone for, at moſt, what can be conſidered only as a venial fault, an inability to pay a ſum of money at the moment it is demanded.

If theſe conſiderations are not deemed ſufficient to eſtabliſh the poſition in the minds of all men, that ſuffering debtors are rather conſidered, and juſtly too, as unfortunate men, than as criminals, I ſhall add nothing more in its ſupport—But for the ſake of humanity and chriſtian benevolence, I will proceed on my ſubject, under the impreſſion that you, gentlemen of the Jury, at leaſt agree with me in the ſentiment; and that it was adding inſult to injury to obſerve that debtors ought to be conſidered as little or nothing ſhort of felons—an aſſertion which could only be made by him, who knows, that if the Great Charter and the conſtitutional rights of Engliſhmen *ſhould one day recover their original force* (and I think I ſee the dawn of that bright day appearing in the Eaſt) *that then will the moſt important and the*

moſt lucrative branch of the uſurped juriſdiction of the Court of Kings-bench tumble to the ground—The liberty and happineſs of thouſands will be reſtored, but the golden ſtream, which ſo long has flowed through that channel, will flow no more.

The queſtion ſtill recurs, Is the impriſonment of an honeſt debtor neceſſary and expedient for the general advantage of the community? It may be anſwered, as it has heretofore been aſſerted, *that credit is eſſentially neceſſary in a commercial country*; and it cannot be effectually ſupported by any other means than that of impriſonment for debt.

The neceſſity of credit to the inhabitants of a country like England, poſſeſſing few ſtaple commodities, on which to bottom a foreign commerce; but which notwithſtanding is, from certain adventitious circumſtances, a trading nation, has been ſo ſedulouſly aſſerted and maintained, by ſeveral late popular writers, that to queſtion their judgment, would occaſion a ſuſpicion of the want of underſtanding in the enquirer, or be deemed an act of uncommon temerity.—Prudence, and not the want of ability to maintain the converſe of the propoſition, will therefore guide me in giving it the go-by for the preſent; with only one or two obſervations.—Probably the neceſſity of an extenſive credit, would not have yet become the faſhionable poſition, had not the government of England, ever ſince the coming in of William of Orange, always found it convenient and extremely advantageous to the members of each adminiſtration, to anticipate the national revenues; they thereby, having an opportunity of providing money to diſburſe among their friends and relatives, under the ſhape of army, navy, and lottery contractors, military and naval officers, placemen on the civil liſt, penſioners, &c.—By this *ſcheme of credit* the enormous anticipations had very little ſenſible effect upon the property of the inhabitants at the moment.—Had not your anceſtors been deceived by this wretched *ſcheme of anticipations*, and the falſe appearances held out to them from time to time, by *miniſterial adventurers*, they never would contentedly have borne the burthens.—*Had all the money, wantonly laviſhed, in ſupporting fanciful balances of power in Europe, Aſia, Africa, and America, been taken out of their pockets by the prompt payment of each wanton demand*, you would not now be ſaddled with a debt of two hundred and fifty millions of pounds ſterling; in order to keep down the intereſt of which, and to compenſate the induſtry of officers who receive and enjoy the public contributions, you are obliged to pay annually about twenty-three millions of money, or about the average price of eighty days labour for every man in the nation.—Had your anceſtors contemplated the ſufferings devolved upon their wretched poſterity, they would not have given riſe to the aſſumed poſition of an almoſt incredible *neceſſity*

of

of credit!! Let any candid perſon enquire into the *effects* of public credit in this nation, and they will find abundant reaſon to curſe the *cauſe*.—To it is owing the national debt and taxes before mentioned, which have in their natural conſequences thrown ſuch a weight of power into the executive ſcale of government, as cannot be thought was intended by your patriot anceſtors, who glorioufly ſtruggled for the abolition of the then formidable part of the prerogative; but who, by an unaccountable want of foreſight, eſtabliſhed this ſyſtem in their ſtead.

Here Mr. Lloyd was ſtopped by the Judge; who aſked, how the arguments he was urging were intended to apply to the caſe in hand? Mr. Lloyd anſwered, that he contended againſt the legality of impriſonment for debt; that the neceſſity of credit, public as well as private, was conſidered requiſite for the advantage of the community; that if he could ſhew from experience, that credit was rather injurious than beneficial to the nation, it would not follow that impriſonment for debt ought to be allowed, in order to ſupport a ſcheme which did not rendered a benefit to the public equal to its diſadvantages—and if he could ſatisfy the Jury on the illegality, they could not criminate him for an attempt to eſcape.

The Judge told him he might proceed.—He then repeated the paragraph, to that part where he was interrupted; ſaying, the Jury ought to notice that he was not ſtopped until he came to apply his remarks to the executive power of the ſtate.—He now continued his argument.

The entire collection and management of ſo vaſt a revenue, being placed in the hands of the executive officer, the monarch! have given riſe to ſuch a multitude of new officers, created by and removeable at his pleaſure, that they have extended his influence to every corner of the nation.

To this aſtoniſhing neceſſity of credit, is owing the encreaſed prices of every neceſſary of life, by which the day-laborer is deprived of two out of his three daily meals of fleſh proviſion, or is obliged to ſubſtitute broth for beef, and potatoes for wheaten bread. To it is owing *the increaſe of a paper medium, and the decreaſe of ſpecie!*—To it is owing the circumſtance of *charging the active and induſtrious man, who pays his ſhare of the taxes, to maintain the idle and indolent creditor, who receives them!*—To it is owing, the numerous ſwarm of cuſtom-houſe officers, exciſemen, diſtributors of ſtamps, receivers, managers, commiſſioners, ſecretaries, clerks, and various inſpectors of taxes.—Should I become more particular ſtill, the tedious tale might diſguſt you.

Here one of the Jurors ſaid, It very well might. To which Mr. Lloyd replied, He did not doubt it.

The Judge told him, he muſt not ill treat the gentlemen who

were to decide upon his caſe.—Mr. Lloyd anſwered the Judge, that he apprehended his obſervation to the Jury was not heard by the bench, or they would not ſuſpect him of entertaining an inclination to ill treat the Jury: he would repeat the words, which he did.—When the Judge told him to proceed: he then went on, ſaying, From this view of the ſubject I truſt you do not diſcover the neceſſity of adding the additional wrong of impriſonment for debt, in order to give a greater facility to credit.

But, gentlemen, an exceſſive facility of credit is a vicious facility: when conſidered in its application to the private walks of life, it does not benefit individuals even in trade, any more than as I have ſhewn you public credit has benefited the nation; yet this vicious facility of credit, which we ought to deprecate, is rather encouraged than reſtrained by the practice of impriſonment for debt.—It is a maxim among merchants and political œconomiſts, that trade is beſt regulated, when left to regulate itſelf. It is in its nature like the element of water, it perpetually ſeeks its own level; the equilibrium which its natural vibrations tend to preſerve, are deſtroyed by the force of legiſlative regulations;—the factitious aids given by law to facilitate credit, has ruined thouſands, without benefiting ſcarcely a ſolitary deſerving individual, beyond the vortex of the courts of judicature. Here is the great gulf into which millions of money are annually whirled, to ſerve as prey to the greedy and voracious monſters which infeſt theſe deeps: like Sylla and Charibdis, they ruthleſs feaſt on the unfortunate voyager ſailing on the ocean of life, who happens by the ſtorms of adverſity to be driven within the reach of their rapacious and all-devouring jaws.

The cupidity of avarice irreſiſtibly propels men on to ſeek its gratification by every avenue which ingenuity can lay open to their acceſs; the avarice of commercial ſtates is of an active quality; all the miſchiefs which this vice creates are poſitive and direct miſchiefs; it is an incurable diſeaſe of the mind! conſiſting in a diſpoſition to engroſs the goods of life, to the excluſion of our neighbour; it is an induſtry at once morbid and exceſſive; nor is the reſpected name of induſtry a ſufficient veil to diſguiſe it from popular odium. Permit me briefly to expoſe its hideous portrait.—You have the opportunity of viewing it in the perſon of yon trader, who with one hand practiſes all the arts of monopoly, to prevent the circulation of the bleſſings of real, ſubſtantial, and productive induſtry; while with the other he ſpreads far and wide the goods he has engroſſed, and with the view of inordinate gain he holds out to the adventurer, in an inferior order of trade, all the temptations of extraordinary credit and confidence. The needy adventurer, in his turn, with a blind and fatal activity, parts with his goods for the mere name of every moneyleſs prodigal; and the prodigal,

digal, allured by the ſame facility of credit, is encouraged to take a ſhare in the common miſchief, by contracting debts which he never can diſcharge. Thus, gentlemen, you behold the rapacious ſpirit of the trader, acting under the impulſe I deſcribed; and you will not wonder, if he frequently brings that ruin upon himſelf which he is certain to bring upon the others of this lamentable groupe.—You have not once ſeen, in the whole of this circle, an enquiry into the ſubſtance or property of the perſon contracting the debt: and why this neceſſary precaution has not taken place, I will next endeavour to unfold.

The aſtoniſhing number of merchants and traders which this country exhibits in every direction, ſtrikes moſt forcibly upon the ſenſes of the beholder; where the candidates are ſo numerous, every ſtrong art muſt be tried to court, engage, and win the cuſtomer: minute enquiry into the circumſtances of the purchaſer dare not be made, leſt, perchance, he leaves the trader in diſguſt; and, as the trader's exiſtence depends upon his ſales, he is inclined to prefer the *riſque* of loſs, to the moral certainty of loſing a preſent livelihood: add to this, the *forced and fictitious* trade, riſing out of an inordinate ſpirit of ſpeculation (which is one of the greateſt political evils in this as well as ſome other commercial countries) and you diſcover enough to prove, to a moral certainty, that neceſſary precautions, on the part of the creditor, are omitted from a vicious principle.

The ſelfiſh and vicious propenſity of monopoly and mercantile avarice, is a great and growing evil, which it may be difficult to reſtrain; but certainly its exertion ought not to be aided by the laws. An endeavour has frequently been made, by legiſlative bodies, to encourage the uſe and prevent the abuſe of credit; the latter always proceeds, as I have already ſhewn, as much from him who gives, as from him who receives it. The object of both parties, if traders, is to extend beyond all bounds their ſeveral lines of trade; but, in as much as traders deal with perſons who are not in trade, in this caſe it muſt often be the object only of him who gives the credit. Yet it ſeems hitherto to have been underſtood, that the practice of law, in reſtraining that exceſs in the operation of credit, by deterring from its abuſe, takes notice only of him who receives it, while it ought equally to affect him who gives the credit.

The impriſonment for debt may be *thought* to diſcourage a perſon from taking credit; but *it certainly* encourages him who has to give it; and ſo great is the encouragement, that it induces the creditor to forego an examination into the circumſtances of the debtor: he reſts ſatisfied, under the impreſſion that the perſon will contrive to pay the debt contracted, rather than go to jail. Nor does the creditor's expectation end here; if, in conſequence of his power over the perſon of his debtor, the man

is dragged to priſon, his friends and relatives are, from motives of benevolence, expected to relieve him by the payment of the demand. To uſe the emphatical expreſſion of a venerable Judge who lately ſat in this place—"The creditor expects *to torture* "*the compaſſion* of friends, and by that means *extort* payment "from thoſe who are not bound for the debt."

But the learned lawyer, or ſome one of theſe gentlemen who ſurround me, will perhaps repreſent the agreement between the debtor and creditor as a juſt contract. They know each their fate under a municipal regulation: the creditor truſts to the conſequence, which the debtor agrees to ſubmit to, if he fails in the fulfilment of his engagement.

This, gentlemen, is reaſoning in a vicious circle, and your practice derives no aid from the argument.

By one of thoſe honourable reſtraints which civil liberty puts upon our actions, no poſſible mode of bargain, tranſaction, or covenant, nor even hereditaryſhip, can place two individuals in the relation to each other of maſter and ſlave, for every citizen owns a character which may be forfeited by crime, but cannot be ſurrendered by contract.

It is ſaid to be the conſtitutional boaſt of Engliſhmen, that the *public good* is an eſtate in common, of the free poſſeſſion and enjoyment of which no law can deprive the humbleſt individual, who is not *convicted* of a crime. The public good is no ſuch eſtate to the impriſoned debtor; it is loſt to him who is incapable of enjoying it; and the true eſſence of ſlavery conſiſts in perſonal dependance, and the want of thoſe civil rights which others enjoy—the true picture of an impriſoned debtor. I aſk you, gentlemen, would it be a lawful contract, for a man to ſtipulate with his neighbour, that on a certain event he ſhould deprive him of the uſe of his limbs; or if he failed to pay a ſum of money, his perſon ſhould be locked up in idleneſs, and his exiſtence rendered inſignificant, if not inimical to the public good?

Neither the principle of juſtice or policy, or any regular principle whatever that I can diſcover, ſhews the effect of civil impriſonment to be ſalutary or conducive to the general good. If the reverſe has been made to appear, as I truſt it has, the practice ought not to be ſuffered to continue another hour, whatever may be its principle.

Under theſe conſiderations, I leave it to you to judge, whether the neceſſity of credit ought to be deemed a ſufficient plea to warrant impriſonment for debt; and yet to this maxim, of the neceſſity of credit, is owing the increaſed ſeverity of the practice of the courts of judicature relating to debtors.

Taking it, however, for granted, *that credit is expedient for the advantage of the public*, it does not follow, either in the theory

or

or the practice of good policy, that it is therefore neceſſary to impriſon the body of the debtor.

In theory—Becauſe in the *productive induſtry* of the inhabitants conſiſts the *wealth of the nation*; the impriſonment of an induſtrious individual is not only a diminution of the *cauſe* of wealth from the ceſſation of his induſtry, but it is likewiſe a reduction of the *maſs of national property*, inaſmuch as the product of the labor of the remaining part of the community is obliged to ſupply the perſon in confinement with neceſſary proviſion and clothing, and to pay for the uſeleſs labor, employed in erecting expenſive priſons, &c.

In practice—Becauſe civil proceſs, ſuch as is now carried on in courts of indicature, beſide the unneceſſary conſumption of time it occaſions among ſuitors, witneſſes, &c. and the unearned ſupport it renders to the leeches of the law, it does not procure any advantage to the public, by an addition to the capital of the honeſt and induſtrious man, who endeavors to recover, and ſucceeds in obtaining his debt from the indolent debtor; for the aggregate of all the money recovered by legal proceſs does not amount to the ſum expended in the proſecution of the ſeveral ſuits annually decided in the nation, which money ſo expended tends only to promote a vicious induſtry;—this fact is worthy of particular conſideration.

Again—Becauſe it is not *intended by* what is now adminiſtered as law, that the circumſtance of impriſonment ſhall diſcharge the debt. No, Engliſhmen, that is not the intention of the court! the confinement of a debtor (a confinement for life) is conſidered as the puniſhment (not a public one for a crime, but a private one to gratify an individual) *wiſely and humanely* apportioned to the *offence* of not having money in your pocket to pay a debt on the ſudden. The law juſtly *conſiders confinement as the whole of the debtor's puniſhment, and of the ſatisfaction made to the creditor!* Oh ſhameful proſtitution of terms! What, gentlemen, is ſeen in theſe conſiderations of policy, to point out the neceſſity of impriſoning the body of a debtor, in order to ſupport *an expedient degree of credit?* I truſt nothing but what is ſhocking to philanthropy. Oh ye lovers of mankind, emancipate your brethren by a change of ſyſtem.

In conſidering the ſubject of impriſonment for debt in the abſtract, we ſhall find there is *injuſtice* in it, on more accounts than one. The *only ſatisfaction* a creditor ought to ſeek, or is warranted to receive, is *a real pecuniary ſatisfaction*; *the law renders him injuſtice in propoſing an illuſory and fictitious one.* Nay, the old Roman law, which gave the creditor a property in his debtor, was more advantageous to both parties, than is the law which intombs a man for life; the creditor and the nation received a *benefit* from the labor of the debtor when he worked

for his maſter, but neither are advantaged by keeping a man in jail.

It is an *univerſal principle in trade,* that the trader ought to lay on the commodities he vends an advance ſufficient to cover the rent of his ſhop or warehouſe, domeſtic and incidental expenſes, together with the intereſt of his money and credit employed by way of capital, with an allowance for waſte, damage, &c. *to all which is to be added a premium, to ſecure him againſt the probable chance of bad debts, uſually calculated from two and a half to five per cent.* A trader thus ſecured (as all ought to be) can have no right in equity to this part of the profit, which belongs to him *only* in conſequence of the moral certainty, that ſome of his cuſtomers will make deficit to that amount; hence the aggregate cuſtomers pay for the well-calculated delinquents.—Is there a man in buſineſs who would refuſe to abate this two and a half, or five per cent. as the caſe may be, to thoſe who purchaſe for caſh, provided his ſales were for caſh only? If not, and yet he receives of the paying cuſtomer the two and a half, or five per cent. and likewiſe the bad debts he calculated upon contracting, I aſk, whether he does not extort two and a half, or five per cent. beyond the fair and honeſt profit which merchants allow themſelves? Or whether he does not employ a bad law to puniſh improperly the poor debtor, by perpetual impriſonment? —Not to extend this argument farther for the preſent.

Let us now proceed to examine whether impriſonment for debt *is not a crime againſt Magna Charta, the Bill of Rights, and other ſubſequent ſtatutes,* extorted by the people at various times, from thoſe who pretended to govern the nation by the right of conqueſt, or right divine, ſuch as King John, the Henries, the Charleses, and others who have diſgraced the throne.

The language of Magna Charta is, "that no freeman ſhall be "taken or impriſoned but by the lawful judgment of his equals, "*or* by the law of the land." Here permit me to aſk, has any gentleman preſent ſeen the original Magna Charta depoſited in the Cottonian Library at Oxford? The intention of this queſtion leads to another, Whether they remember it to run, "*Nullus liber homo capiatur vel impriſonatur niſe per legale judicium parium ſuorum,* VEL *per legem terræ*;" or whether it does not ſay, "*per legale judicium parium ſuorum,* ET *per legem terræ.*" The reaſons I make theſe enquiries are, that I remember to have frequently ſeen in Philadelphia, in the archives of the ſtate, a copy certified by the keeper and other officers of the Cottonian Library, illumined and ornamented as the original, ſent to that country by William Penn, when he was proprietor of the then province of Penſylvania, in which the words were "ET *per legem terræ.*"

Mr. Lloyd had waited ſome time for an anſwer, when the Judge told him to proceed.—Then, ſaid he, I am to take it for granted

granted that the word is ſtated right; it is *or* and not *and*, as conjectured.

Well, gentlemen, we have ſeen that no law of the land is valid, which takes away or impairs a natural right, farther than is neceſſary for the general advantage of the public; conſequently, as there appears to be no public advantage ariſing from confining a debtor in priſon, all regulations inimical to his perſonal liberty are without the meaning of Magna Charta. In order to corroborate this opinion, let me quote a few words from 1ſt Blackſtone, 53 and 54. "Thoſe rights which God and nature have eſtabliſhed, and are therefore called natural rights, ſuch as are *life* "*and* LIBERTY, need not the aid of human laws, to be more effectually inveſted in every man than they are; neither do they "receive any additional ſtrength, when declared by the municipal laws to be inviolable. *On the contrary, no human legiſlature has power to abridge or deſtroy them, unleſs the owner ſhall himſelf commit ſome act that amounts to a forfeiture.*" The right being derived from God and nature, no act but againſt the divine law or law of nature ought to be deemed an act amounting to a forfeiture of a natural right; the law of nature is here out of the queſtion; and the divine law, under the chriſtian diſpenſation, commands us to forgive our debtors, if we expect to be forgiven.

The ſtatutes of the 5th Edward III. chap. 9; the 25th Edward III. chap. 4; and 28th Edward III. chap. 3. expreſsly direct, "*that no man ſhall be taken or impriſoned, unleſs it be by legal indictment, or the proceſs of common law.*" It is unneceſſary to remark, that proceſs by indictment is never uſed in actions of debt between individuals. Let us then proceed to view how impriſonment for debt is *attempted* to be juſtified in the *face of theſe ſtatutes, under the common law.* This legerdemain of the Civilians is coloured to the world by the hocus pocus and incomprehenſible jargon of *legal fictions*; and ſo well are ſome men, who live by theſe practices, convinced of their propriety, that they hold it as a maxim of the law, that *in fictione juris conſiſtit æquitatis*; in plain Engliſh, *that a legal lye agrees with truth.* If this be true, all I can ſay is, that it is more than falls to the lot of any other ſpecies of falſhood which I ever heard of; but there is no general rule without an exception, and here is an additional verification of it.

That law againſt perſonal liberty ought to be *ſtrictly conſtrued*, and not left floating on the wings of airy fiction, is proved by the ancient practice of the courts, is what I ſhall juſt point out, and then proceed. Under the ſtatute of Marlbridge, introduced in favour of the barons, whereby their bailiffs might be attached by their bodies, if they failed to account to their lords, is ſeen the firſt attempt made in England to authorize by law the impriſonment of a man's body for a civil injury, unaccompanied

panied by force; but it forbade the bailiff's arreſt, unleſs two circumſtances concurred, namely, he muſt not only have firſt abſconded, but alſo muſt not poſſeſs a freehold eſtate of even the moſt trifling value. The *conſtruction* of this law induced ſuch a degree of caution in applying the remedy, as to render it nugatory or inadequate.

In the reign of Edward I. a law, introduced for the protection of merchants, ſeized abſolutely upon the perſon of a debtor; ſuch laws and ſuch practices were unknown to your Saxon anceſtors, they were firſt introduced by the Norman race, but frequently reſiſted by the people or barons. The Magna Charta, obtained *ſword in hand* (ſee the effects of ſtretching power!) was a declaration that the people were never thereafter to be impriſoned for injuries committed without force; it was confirmed by his ſon Henry.—The ſtatute called *Confirmatio Cartarum*, whereby the Great Charter is allowed to be the common law, and all judgments contrary to it are declared void after. Notwithſtanding theſe frequent repetitions of the people's right to be free from arreſt, it nevertheleſs was ſo contrived by the government, that thoſe againſt whom they entertained any grudge, were always impriſoned; and the exertion of the people to oppoſe ſuch practice is ſhewn by there being no leſs than 32 ſubſequent and corroborative ſtatutes paſſed from the time of Edward I. to Henry IV. This is ſufficient to evince the diſpoſition of the monarch on the one hand to tyrannize, and of the determination of the men of thoſe days to enjoy their natural liberty, in every caſe where it might be enjoyed without injury to the community.

Nor dare the courts of judicature, by their countenance and connivance, have contrived to bring about what had been ſo often fruſtrated, when attempted to be effected by the executive of the ſtate, had not the people been gradually accuſtomed to the practice. The idea had loſt its novelty, in conſequence of the ſtatute of Merchants and Marlbridge; the practice in thoſe ſpecial caſes had worn off in ſome degree the horror which had heretofore generally ſeized the human mind, on hearing or ſeeing of men confined for debt. Thus it is with every tyrannic regulation; it gets footing in a ſmall degree, under the colour of neceſſity, or of promoting ſome popular intereſt; it is afterwards extended to others, and proceeds without obſervation, till at length it grows inſenſibly into a common courſe of execution. Gentlemen, there have been Judges who found leſs enjoyment in their proper juriſdiction, than in the conſtant exerciſe of judicial power, however trivial the ſubject:—the *active ſpirit of induſtry* has been buſy, even on the bench, and *its ſubſtantial gains* have bore down the *dignity* of magiſtracy; but had the age of reaſon then arrived, a Judge would have been

ſtricken

ſtricken with its harpoon, and, like the greedy and voracious ſhark, the more he ſtrove to extricate himſelf from the embarraſſment which its point occaſioned, the deeper it would have penetrated him. The Court will take in good part the obſervation I have juſt let fallen, when they recollect the language of Judge Coke, who, after commenting on the deſtruction of the Jews in England, by the ſtatute *de Judaiſmo*, adds, that another kind of Jews were alſo puniſhed, viz. the Judges of the King's-bench and Common Pleas, the Barons of the Exchequer, and the Judges itinerant. Contraſt, gentlemen, this with the preſent time, and enjoy the reliſh! At the moment I am ſpeaking of, the courts were buſily employed in ſuperſeding the legiſlature, by *fictitious contrivances*, which operated as new laws; indeed, all their proceedings were expreſſive, in thoſe days, of what was their object. It was, however, neither the protection of perſonal liberty, the ſecurity of property, the ſuppreſſion of groundleſs litigation, nor the peace of the public;—the object appears to have been their private emolument; to aid which was extended impriſonment without law, a thing clearly, and which this Court muſt acknowledge, to be completely unjuſtifiable. In the reign of Henry VII. theſe practices, it is ſaid by ſome, though without foundation, met indirectly with the approbation of the legiſlature, who attempted to make it legal to extend the impriſonment of defendants upon mere civil actions: but ſuppoſing it to be true, what was the time? The ſpirit of avarice was then ſeated on the throne of England, and the rights of perſonal freedom, the independence of integrity, the efforts of induſtry, even the ſacred claims of misfortune, were relentleſsly immolated at her ſhrine.

I have one more remark to make before I quit this ſubject. The reign of Harry VII. was the petty tyranny of an extortioner, not the ſovereignty of a monarch; and *the people were taught*, by the baſe miniſtry of Epſom and Dudley (who were, if I forget not, both afterward hanged) and the frigid maxims of their maſter, and it was then firſt underſtood, that a failure in the punctual payment of money was a wrong, which no diſtinctions or circumſtances could extenuate. Was the unfortunate debtor put to death, it would not pain him ſo much as the mercy of thoſe laws which conſign him to ſlavery: but I miſtake;—the word *ſlavery!* which diſgraces your Weſt India laws, is not ſuffered in this boaſted land of freedom. The poor wretch of a debtor is deſcribed in milder terms: he is committed to priſon, and placed under the power of his creditor, becauſe he is unable to pay him the debt which he owes him. He is not deprived of life or limb, but diſabled from enjoying the uſe of them. Is this not ſlavery? No, ſays the civilian;—but how miſerably are we led aſtray from the true nature of things by a ſound!

Let

Let us now, gentlemen, proceed to draw up the curtain, and exhibit to the world the art of judiciary conjuration, as performed in this nation for ſome years paſt, with ſuch effect as to wring the hearts of even thoſe who have thought themſelves unintereſted ſpectators. "No man (ſays the ſtatute) ſhall be "taken or impriſoned, unleſs it be by indictment, or the proceſs "of the common law." The proceſs of the common law in *caſe of injury done to another without force*, ended on having gradually ſtripped the debtor, by repeated diſtreſſes, of all his ſubſtance; and if he had no ſubſtance, the common law held him incapable of making ſatisfaction; and therefore looked upon all further proceſs as nugatory.—And beſides, even upon feudal principles, the perſon of a feudatory (a perſon not free) was not liable to be attached for injuries merely civil, leſt thereby his lord ſhould be deprived of his perſonal ſervices. The ſtate has ſurely as much intereſt in a freeman, as ever the lord had in his vaſſal.—That the lord was not liable to be impriſoned is proved by the continuance of his privilege from arreſt, which exiſts at the preſent hour. But this old common law is changed, or, to uſe a word more in repute, *the law is reformed*, and accomodated to ſuit the "*ſwiniſh multitude.*" This beaſtly herd having thrown off their necks the yoke of feudal vaſſalage, and become emancipated men, are now fitted to wear the fetters intended for felons, which faſten for ever round every limb of the unfortunate debtor. The feudal ſyſtem, which conſidered men as ſlaves, permitted them unmoleſted, for injuries merely civil, to range the verdant field, and breathe the ſalutary gale; while the reformed ſyſtem of government acknowledges men to be free, and yet orders them, for injuries merely civil, to be puniſhed by cloſe confinement, in a lonely dungeon, where is ſucked in with every breath a deleterious effluvia and tainted air.—And how is the law reformed? Knowing that man ought not to be abridged of his perſonal liberty, *unleſs for ſome great and atrocious crime*, the practice now is, to ſuppoſe and aſſert that the debtor is proſecuted *for breaking the plantiff's cloſe by force of arms*; theſe are the words of the original and capias: *now breaking of a man's cloſe by force of arms* was juſtly deemed, by the old common law, *a great and atrocious crime*, and *as ſuch* warranted the forfeiture of perſonal liberty.—But can this *glaring falſhood, this legal fiction, this imaginary armed robber, this giant-ſlaying man of ſtraw, be allowed to criminate a quiet, peaceable, unfortunate man?*—and yet, ſtrange as it may ſeem, it is for this ſuppoſed open and daring aſſault, aided with inſtruments of deſtruction, that tens of thouſands of men and women are deprived of perſonal liberty, and of the opportunity of exerciſing their induſtry; their children are prevented from receiving an education to form their minds to the cultivation of thoſe virtues which uſed to form the character of Britons.

By

By the means I have juſt deſcribed, the debtor is arreſted for a crime he never even contemplated, and brought to priſon; he is ſuffered afterward, by the connivance of the court, to be proſecuted for any leſs forceable injury, and is to be detained for life, without ever having perhaps committed a *great and atrocious crime of any nature whatſoever.*—Nor does the misfortune end here—being once in confinement, the jailor diminiſhes the priſoner's liberty, from the yard to the houſe, from the houſe to a cell, according to his diſcretion; he excludes the poor wretch from ſociety, and deprives him of every neceſſary of life—in fine, all the horrors of the Baſtile are incidental to a man's ſituation who is confined for debt.—I ſhall add no more on the ſubject of this farago of deceit, impoſture, and legal iniquity, which one might ſuppoſe nothing but unbluſhing confidence, abſolute power, and adamantine hearts, occupying the ſeats of juſtice, could enforce.—Oh that the *ſpirit* of Alfred, who ordered at one time twelve Judges to be executed, for countenancing illegal proceedings, would again viſit all corrupt judiciaries, and purge from them thoſe who are a diſgrace to that reſpectable ſituation!

By the petition of right, the 3d Charles I. it is declared, "That no freeman ſhall be impriſoned or detained *without cauſe "ſhewn*, to which he may anſwer according to law." The cauſe ſhewn, ought to be *a real and ſufficient cauſe; not a fiction of law, but a real crime;* nay, even a ſhameleſs magiſtracy have in one caſe owned this truth. When ſummons, which is a warning to appear in court for injuries not againſt the peace, were diſobeyed, and the ſheriff had found the defendant upon any of the writs of *capias, latitat,* &c. he was obliged to take him into cuſtody. For, not having obeyed the original ſummons, he had ſhewn a contempt of the Court, and ought no longer to be truſted at large: for all *contempts* of legal proceedings *are deemed great and atrocious crimes.*—But the change of the Engliſh juriſprudence, by letting the ſummons fall into diſuſe, and introducing the capias as the firſt proceſs, which commands the ſheriff (as before obſerved) to take into cuſtody the defendant, for neglecting to obey a ſummons never iſſued, was judged to be too hard, as it ordered the ſheriff to impriſon a man for a *contempt* which was *only ſuppoſed*, another fiction of the law; but this fiction is ſaid in ſome meaſure to be corrected by the interference of the legiſlature.

I fear that if I continue the narrative of all the legal fictions, my readers will ſuppoſe themſelves tranſported to the fabulous age, and wonder as much at the fictitious ſpeeches of the law, as they have done, in their childhood, at the fictitious ſpeeches of birds and beaſts, to be found in Eſop and other writers of fables.

If any thing could draw down *contempt* upon tribunals of juſtice, it muſt be a mockery of common ſenſe like what I have endeavoured to point out.

Before

Before I quit this ſubject, I ſhall quote a few ſentiments from Mr. Burgeſs of Lincoln's-Inn, whoſe treatiſe on the law of inſolvency fell into my hands by accident the day before yeſterday. —Indeed, I wiſh that I had had an opportunity of preparing myſelf for this trial, by an arrangement which would have admitted me the more copious uſe of this excellent author. He rightly maintains, "that if any perſon, or any court of juſtice, "uſurps a juriſdiction, and by colour thereof arreſts or impri- "ſons a man, or, under pretence of any uſurped authority, "oppreſſes any man, contrary to Magna Charta, the illegality "of the act will call for exemplary puniſhment." He then goes on to ſtate the ſeveral ſteps which the Courts of Marſhalſea, of Exchequer, of Common Pleas, and of King's-bench, took to effect their uſurpation over the perſons of debtors; in which he notes the various arts, devices, frauds, and fictions they ſeverally uſed; the recital of which not only coroborates every thing I have ſtated, but more clearly demonſtrates than I have been able to do, my general principle, that impriſonment for debt is contrary to the rights of men, and particularly of Engliſhmen, who are ſuppoſed to have their natural rights better ſecured to them by certain declarations, than the people of other nations have yet been able to attain.—On this point he holds this energetic language: "But the law which is founded in nature, which "ſprings from the primary and indefeaſible rights of mankind, "ſhould be more reſpected. Men are not to be hanged, that "jurymen may dine; nor are free Engliſh citizens wantonly to "be impriſoned; the conſtitution of the county is not to be "undermined, that *the Court of King's-bench may fatten on the "ſpoil.*"

On a legal fiction, to introduce a defendant to the notice of the court, he ſays:

"Thus we ſee the conſtitutional law was overturned, and an "illegal juriſdiction was eſtabliſhed, by a deciſion of the very "court which was to derive an advantage from the abuſe. "This determination, built on an untrue ſuggeſtion, has never "been contradicted by its ſubſequent practice, unfounded as it "is in reaſon, oppoſite as it is to the known rule of law. That "rule, which ſprings from a ſource, higher and more ſacred "than the dictum of any Judge, is well known; it was even "the acknowledged guide of the courts, in all matters which "related to others, and which did not interfere with their own "immediate intereſt. So early as the year 1356, Robert de "Thorpe, the Chief Juſtice, in the moſt public and ſolemn "manner declared, 'that inconveniencies muſt perpetually "ariſe, if a man's own deceit ſhall be allowed to aid him; for "it is a principle of law, that *fraus et dolus nemini patrocinatus*; "no one therefore ſhall be allowed to take advantage of his own "fraud.' But what was good law for the public, was not

"conſidered

" conſidered as ſuch when it interfered with a uſurpation of " juriſdiction. The court took upon itſelf the determination " of its own cauſe: it was at the ſame time judge and party. " The law was ſacrificed to intereſt. The good old maxim of " *Boni Judicis eſt ampliare Juſtitiam*, venerated by the founders " of the conſtitution, was exchanged for a new doctrine. *Boni* " *Judicis eſt ampliare Juriſdictionem*, became the favorite motto " of the bench. How well the ſpirit of this rule has been pre- " ſerved by ſucceeding Judges, the daily experience of mankind " will beſt prove."

My author proceeds to ſhew the meaſures which were occaſionally taken by the legiſlature, to curb the propenſity of the courts to endanger, by their practices, the rights of man. Obſerving that the benevolence of the legiſlature was productive of but little advantage, for the operation of the laws were rendered abortive by the politic manœuvres of the courts; and adds, the Court of King's-bench proceeded in its courſe, and exulted in the prolongation of its hour of inſolence. All civil cauſes were violently drawn before it; the greateſt encouragement was given both to ſuitors and attornies, by a connivance in abuſes the moſt ſhameful and diſgraceful to our national character. Theſe enormities were attempted to be reſtrained by the legiſlature; but they will continue to be a reproach to the Court of King's-bench, and a diſgrace to its Judges, ſo long as the records of this kingdom ſhall remain, ſo long as Engliſhmen ſhall *execrate* the deſtroyers of their primary rights.—Let us no longer be inſulted with an aſſumption of power, which, however a continued uſage may have made it familiar to the multitude, cannot obtain reſpect from the accurate and impartial obſerver.

Having concluded a long and intereſting chapter on the ſubject of the abuſes of the courts of judicature, previous to the time of Charles the Second, this author goes on: " We now " enter upon the laſt ſtage of our hiſtorical deduction, and pro- " ceed to lay before the public thoſe recent proviſions which " the wiſdom of the legiſlature has deemed adviſeable, for the " purpoſe of aſcertaining the oppoſite intereſts of creditors and " debtors. From the Reſtoration to the preſent time, the " general aſpect of things has received but little alteration. " *No law has been made to declare the legality of impriſonment for* " *debt, conſequently that practice has received no additional ſanction.* " If previous to that period it was illegal, and contradictory " to the conſtitution and to the common law, it ſtill continues " in the ſame predicament, and is equally liable to reprehenſion."

But I am unwilling to detain gentlemen by a recapitulation of arguments, although they are expreſſed with animation, and carry along with them abſolute conviction. I think I ſee

impatience

impatience ſeated in the viſages of ſome around me—I ſhall therefore proceed to other obſervations.

Next then, gentlemen, you will pleaſe to behold, judiciary power holds out to the injured and impriſoned debtor a mean of deſtroying this legal magic: the taliſman is no other than the far-famed Habeas-Corpus act, which may, only in thoſe times when adminiſtration procures its ſuſpenſion, be put in motion by the application of the *prima vitæ*; ſome ſix or eight guineas will obtain the immediate interpoſition of this enchanting wand, if its operation is not arreſted for want of an *alias* and *pluries*, and the impriſoned debtor will find himſelf preſented in *propria perſona* before the very tribunal of whoſe injuſtice he complains: he has then to ſubmit to its conſideration the legality of his impriſonment! the judges are to determine on their own actions! for it is they who authoriſe and connive at the meaſure. Surely it is unneceſſary to remark on this boaſted charter, the great ſecurity Engliſhmen have for their perſonal liberty!! Whatever good it may render a perſon confined for ſuppoſed crimes, or on what a court may call unwarrantable authority, as many no doubt have been, it can render no benefit to an unfortunate debtor, confined for the ſuppoſed hoſtile invaſion of his neighbour's cloſe, by the connivance of the court itſelf!

If the laws reſpecting debtors were adminiſtered according to ancient uſage, thoſe unfortunates would become happy. But it muſt be accompanied with the abatement of the nuiſance, which every where intrudes upon your view—the fall of pettifogging attornies, and all their gang. But will lawyers of eminence ſo far forget *l'eſprit de corps*, as to aid ſuch an endeavour; it is to be feared their intereſts are too nearly connected with the baſe creatures of the profeſſion, to permit them to join in the ſupport of the cauſe of liberty. To them then the defendant declines to apply. Shall he apply to parliament? That body has had the queſtion too often before them, without deciding upon the contradictions which appear between the law and the practice. To them then he does not apply; but he applies to a more numerous and to as well-informed a body of men.

The Judge here told the defendant, that he was advancing to the edge of a precipice, of which it was his duty to inform him. The ſentiment he was about to expreſs might be taken down, and turned againſt him, if the language could be conſtrued into an offence againſt the law.

To which Mr. Lloyd replied, That he was very ſure of the ground upon which he trod, and did not fear to proceed to what was thought the edge of a precipice. He knew that his words might be taken down, and perhaps, by ſome ingenious perſon, tortured into a crime. He was willing to ſave any one the firſt par tof this trouble, by furniſhing him with a copy of the

the ſpeech; for he had reduced what he had to ſay on this head to writing, previous to his coming before the Court.

I apply, ſaid he, to the great body of patriots who are every where to be found in the nation; let them, for the ſake of humanity and their common ſafety, unitedly and vigorouſly adopt every conſtitutional and legal method to root out the evil. Let them remonſtrate with the Commons, memorial the Lords, and petition the King; it is for them to obtain the redreſs of the wrong by an appeal to Parliament, and not for me to endeavour it. An individual of another nation has little to do here with the legiſlature of this; if he ſuſtain wrongs, he has only to complain to the uſual tribunal, and if juſtice is refuſed him there, he has to ſeek it at the hands of thoſe who are bound to procure it for him. Independent and gallant nations will never permit perfidy to take advantage of its own wrong. If the energies of the people ſhall obtain the reſtoration of their privilege of being free from impriſonment for debt, it may be hoped, that the poor trader will no longer lie rotting in jail, while the lordling is ſtrutting about the purlieus of St. James's, like the jay in the fable, in the borrowed, or rather, let me ſay, in the ſtolen plumage of others.

If, however, the legiſlative authority of the ſtate is blind to the nation's intereſts; if courts of juſtice not only connive at, but vindicate the oppreſſion I have complained of, cannot the voice of humanity and truth find its way to the boſom of the individual?

As men, as Engliſhmen, as Chriſtians, the voice of beneficence calls upon you! Who is there who is fortunate? Who is happy? Who aboundeth in the good things of this world? Haſt thou no ſenſibility for the diſtreſſes of thy fellow creatures? Canſt thou enjoy at liberty the bleſſings of life, nor feel a pang for the miſeries to which thou haſt condemned thy debtor? If thou *knoweſt them*, thy heart will ſmite thee, for the day of retribution will ſurely come, when the God of mercy will require an account at thy hands. If thou *knoweſt them not*, turn to the priſon-houſe. Behold the man whom thou haſt torn from his weeping family! Do not the tears of his frantic wife, do not the cries of his ſtarving babes, harrow up thy ſoul? Once they were happy, and kind imagination pictured to them ſcenes of future pleaſure! The father, while he laboured for their proviſion, hung with parental fondneſs over his ſmiling infants, or preſſed to his boſom the dear and faithful partner of his life. His toil became a pleaſure, it was for them he toiled, and the public welfare by his labour was advanced. See now where he lies. His ſunken cheeks, his haggard eye proclaim the miſery of his ſoul. Shut up from liberty and day, confined with the refuſe, the moſt abandoned of mankind, torn from all thoſe he loved, and bankrupt in every view of life, he pines, he dies, the helpleſs victim of thine avarice. See where his wife and chil-

dren wander, the outcaſts of ſociety. The father's foſtering hand is ſnatched from them; there is no one now to guide their infant ſteps, to train their minds to virtue and religion. Their welfare in this world is blaſted; and who can tell what may be their fate in the next? Proſtitution, infamy, diſeaſe, and death, conſpire to terminate their courſe. The *ruffian hand of aſſuming and preſumptuous magiſtracy is upon them.* Their father is guilty of poverty, and his ſin brings tenfold vengeance on their heads.

Want, worldly Want, that hungry, meagre fiend,
Is at their heels, aud chaſes them in view.
Can they bear cold and hunger? Can thoſe limbs,
Fram'd for the tender offices of love,
Endure the bitter gripes of ſmarting poverty?
Think thou already hear'ſt their dying ſcreams:
Think that thou ſee'ſt their ſad diſtracted mother
Kneeling before thy feet, and begging pity.
Think thou ſee'ſt this—and *then conſult thy heart.*

Gentlemen of the Jury, I will not endeavour to intereſt your paſſions, by preſenting to your feeling minds the accurate ſtate of your priſons which I have viſited; but allow me the liberty of recommending to your peruſal the Reports of the benevolent Thatched Houſe Society, the Report of a late Committee of the Houſe of Commons—but above all, the works of your own philanthropic and immortal Howard; and let the ſilent tear expiate your participation in the crime of impriſonment for debt.

Gentlemen of the Jury, although I do not know what your judgments may be at this moment on the arguments I have already laid before you, yet I venture to aſſert, that the more particularly you examine them, the more will be your conviction of their propriety. Their novelty may ſtartle you, but I conjure you not to be guided by your prejudice. I know that the practice of impriſonment for debt is ſo intimately interwoven and entangled with the laws of this country, that they may ſuffer by a deprivation of its adheſion; but juſtice and humanity require your inſtant endeavours to effect the ſeparation. If my arguments are not ſolid and ſubſtantial, they ought not (to uſe the phraſe of a preſiding Judge) to weigh as a feather in your minds; but if they are cogent and convincing, they will not loſe their force by falling even from my lips. But ſo well am I perſuaded of their juſtneſs and energy, that I venture to throw the gauntlet to all here preſent, for any one to take up, and maintain the oppoſite ſide of the queſtion. Let us reſtore the age of chivalry, and the God of Reaſon will give ſucceſs to the arms with which I combat.

Gentlemen of the Jury, as I expect that ſome oppoſition will be made to the arguments I have already adduced to prove the unconſti-

unconſtitutionality of impriſonment for debt, either by the Attorney General, whoſe duty I ſuſpect it is to reply to me, or by the Judge of the court in ſumming up the evidence, whoſe intereſt requires ſome exertion, I think it neceſſary to add a few words on another ſubject, connected with the preſent, in order that you may not be miſled in determining upon the legality of civil impriſonment. I apprehend it will be aſſerted here, becauſe I know it has been aſſerted elſewhere, that the practice of civil impriſonment is legalized by acts of parliament and the practice of the courts of judicature. There may be acts of parliament which ſeem to authorize ſuch a procedure, but I have not yet diſcovered them, either expreſs or implied; but if there were ſuch acts, they are not to be conſidered as binding, if they are contrary to Magna Charta.

Gentlemen may be aſtoniſhed to hear this language; but I conjecture that upon examination, they will incline to agree with me.

It is but a few years ſince this country reſted from an expenſive and bloody conteſt with her quondam Colonies, which ſhe had been engaged in, by a weak and injudicious adminiſtration, in order to ſupport the ſupremacy of the Britiſh Parliament; and the principle of that war was applauded by moſt of the addreſſers, in every quarter of the nation.—It is but to-day that like addreſſes are pouring in from all ſides, applauding the Britiſh Conſtitution—from this verſatility and contrariety of opinion, there ſeems to ariſe a delicate dilemma—either the Britiſh Parliament are not omnipotent, as contended at the expence of one hundred and thirty millions of money, and the lives of one hundred thouſand men; or the boaſted Britiſh Conſtitution does not exiſt: If the power of Parliament is ſupreme, it may infringe, abridge and deſtroy, every right which the people of England claim as conſtitutional.—Or if the conſtitutional rights, ſecured by Magna Charta, cannot be changed by Act of Parliament, then is not your Parliament ſupreme, and every act which militates againſt thoſe rights is null and void.—The Court may take its choice of theſe alternatives, either inſiſt upon the ſupremacy of Parliament, to deſtroy a conſtitutional right derived under Magna Charta, and thereby legalize impriſonment for debt—or admit the rights of the people, as recognized in that Great Charter, and condemn the folly of Parliament as expreſſed in the reaſons which induced the diſmemberment of the Empire, and the loſs of territory in every quarter of the globe.—While this happy and glorious conſtitution of yours is a ſubject claiming the admiration of thoſe who are paid for ſupporting it, its non-exerciſe is to me, and all thoſe confined by the arbitrary diſcretion of courts of juſtice and wardens of jails, a moſt ſerious and unbearable oppreſſion.

I mean now to proceed into an examination of the preſent proſecution; in which I ſhall offer ſome reaſons for at leaſt

doubting *the conſtitutionality of making formal accuſations by way of information.* It will not be ſufficient that Lawyers tell you on this head, as they will probably tell you on the laſt, that long practice has rendered that lawful now, which might have been held queſtionable a century ago; but, Gentlemen, I ſolicit you not to be led aſtray by hoary-headed error; let us leave theſe crooked and labyrinthic ways, and return to the ſtraight path of rectitude, leading to the only ſure and permanent ground, which human laws can reſt upon: let us regain, rather let me ſay, let us retain firſt principles, and examine the reaſon and propriety of things, abſtractedly from the cuſtom and uſage of latter times: in which caſe you will certainly find the neceſſity of conducting the proſecution of offenders, by a previous finding of the fact by a uniform proceſs, in order to perſerve an equal diſtribution of juſtice; and you will find, that ſuch was the good old policy of your Saxon Anceſtors; ſuch was the common law of the nation, previous to the introduction of the abominable deſpotic court of Star Chamber; and you will find that ſuch continues to be the common law (a law ſecured to you by charter) at the preſent moment.

Among the early laws of Ethelred, it was declared that all offenders ſhould be accuſed by grand juries; they were ſworn "*quod nolint ullum innocentem accuſare, nec aliquem noxium celare,*" they were not to accuſe the innocent, nor ſcreen the guilty;—their duty toward every individual of the community is here pointed out; every perſon falls within the one or the other claſs; —and there is left no perſon on whom an Attorney General may ſeize; there is no middle ground left unoccupied—the juriſdiction of the grand inqueſt extends over all caſes.

Mr. Juſtice Blackſtone has however given us a different account of this point of law; but he has reference to no authority; he ſays, that the power of filing informations ex officio is given to the crown by the law; and then, inſtead of ſhewing this, he proceeds to ſtate, that the power was originally reſerved in the great plan of the Engliſh Conſtitution, wherein proviſion is wiſely made for the due preſervation of all its parts.

As I know not to what *great plan* he alludes, for I know indeed of no *plan* of the Engliſh Conſtitution, I have been unable to diſcover the ground, on which he pretends to bottom the practice of proceſs by information; and therefore cannot clearly ſhew his miſtake—but added to this, the circumſtance of my cloſe confinement, debarred of every intercourſe with mankind for twenty-two days, when I was ordered to be deprived of the uſe of pen, ink, and paper, and then being ſent to Newgate, and put into a room with ſix other perſons for four weeks, and it cannot be wondered at, that I am not ſo fully prepared on this or any other point as I might otherwiſe have been.

Every perſon has, no doubt, heard of the famous court of Star Chamber,

Chamber, the prompt tool of a deſpotic monarch. To this Court was given (by that to be ſure very excellent Prince, whom I noticed once before, Henry VII,) the power of judging of (in proſecutions by information) the law, the fact, and the puniſhment. This Court, ſo agreeable to Kings, continued in high vigor, through the reigns of the violent and luſtful Henry VIII.—the boyiſh Edward VI.—the deteſted Mary—the deſpotic and imperious Elizabeth—and the ſilly pedant James I. It had daily encreaſed its authority for more than a century, when Charles I. was compelled by his people to aboliſh it, who would no longer ſuffer either his or his miniſters' oppreſſion. The exertion of the prerogative of the crown, to the injury and oppreſſion of the ſubject, which by the by extended no farther than to obtain *annually* of the people, for *all* the purpoſes of government, *about one million of money*, prerogatives which had long lain dormant, and now threatened to be carried into practice, arouſed the ſleeping lion.

The people heard with aſtoniſhment doctrines preached from the throne and the pulpit, ſubverſive of liberty and all the natural rights of humanity.—They examined into thoſe doctrines, and found them wickedly and fallaciouſly ſupported; and common reaſon aſſured them, that if the prerogatives contended for by the monarch were of human origin, no conſtitution could eſtabliſh them beyond the power of revocation: no precedent could ſanctify, no length of time could confirm them.—The nation found they had ability, as well as inclination, to reſiſt the monarch's unjuſt pretenſions, and they ſucceeded.—Charles, before his execution, gave up the loans and benevolences he had uſed to extort; conceded the right to exert martial law in time of peace; put down oppreſſive courts; renounced ſhip-money and other exactions; yet it has been ſeen that thoſe conceſſions were not made with ſo good a grace as to conciliate the confidence of the people: he had either loſt the reputation of ſincerity, or had never poſſeſſed it, which is as great an unhappineſs as can befal a prince: and thus within a few years terminated monarchy and courts of Star Chamber.

Upon the diſſolution, ſays Blackſtone, the old *common law authority* of the Court of King's-bench, as the cuſtos morum (keeper of the manners) of the nation, being found neceſſary to reſide ſomewhere, for the peace and good government of the kingdom, was again revived in practice; and it is obſervable that the ſame act of parliament which aboliſhed the Court of Star Chamber, a conviction by information is expreſsly reckoned upon as one of the legal modes of conviction of ſuch perſons as ſhould offend a third time againſt the proviſions of that ſtatute.

It is true (adds he) Sir Matthew Hale, who preſided in this Court ſoon after the time of ſuch revival, is ſaid to be no friend to this method of proſecution.—But he goes on to ſuppoſe, that Hale objected, on account of the abuſe of the authority,

rather

rather than that he doubted the legality.—But I ſee no reaſon for Blackſtone's ſuppoſition.—That Hale doubted, and that many others have doubted, the legality of proſecutions by information is notorious.—The dark and conclave manner of ſuch procedure is contrary to honeſt policy, and unworthy of freemen—it ſuits deſpots, and the greateſt tyrants in England have always uſed it moſt.—If any gentleman can ſhew me the hiſtory of proceedings in caſes, of the king againſt ſubjects, by way of information, I will venture to predict, that it unfolds to view tyrannies and oppreſſions which ſhould harrow up man's ſoul.

Finding myſelf too much fatigued to continue my arguments on the doctrine of informations at the preſent time, I am compelled, though unwillingly, to abandon the ſubject in the incomplete ſtate it is in.—I had alſo prepared myſelf to combat the conſtruction which the Attorney General has been pleaſed to give to the paper paſted up in the Priſon, and to demonſtrate that it is no libel, to ſay that a houſe is to be let, which is every day letting at fifteen-pence per week for each room, and which is notoriouſly changing its tenants almoſt every day in the year. But this and much more I muſt defer to ſome other opportunity, if one ſhould ever be furniſhed to me.

Although I feel a regret in not being able to urge the whole of my arguments, yet as an advantage may reſult to others, it tends to leſſen the regret I feel.—The preſiding Judge of this Court is, I underſtand, called upon this day at an early hour to preſide in the legiſlative body—it has been held that liberty is inſecure where the legiſlative, executive, and judicial authorities are exerciſed by the ſame perſon, yet no one complains here of an incongruity. The Judge will be in time to act his part as a legiſlator, as I ſhorten my arguments.

I ſhall now conclude my defence by a particular examination of the charges laid in the information, and of the evidence brought in ſupport of them.

The firſt charge is, that we conſpired and agreed to eſcape, and to excite the other priſoners to eſcape; that in purſuance thereof, and with intent to carry the ſame into effect, we cauſed to be ſtuck upon the chapel door, and thereby publiſhed, a paper, denominated by the Attorney General an infamous and ſeditious libel.

The evidence falls ſhort of proving any thing like a conſpiracy or agreement to eſcape: the Warden tells you he never heard that either us or any of the other priſoners contemplated an eſcape, nor does it even appear from the teſtimony of any, or all of the witneſſes together, that Mr. Duffin and myſelf ever had an interview: for all that the Jury can ſee to the contrary, we were utter ſtrangers to each other; it will not therefore be contended that the firſt part of the firſt charge has the leaſt ſhadow of foundation.

With reſpect to the publication of the paper called a libel on the

the chapel door, it is in proof that Mr. Duffin was ſeen to ſtick it up there, but is there any thing ſaid of my being preſent? Not one word—How then can the Jury infer that *we* fixed up the paſquinade?

It is true that it appears from the evidence of Mr. Schoole, that three or four hours after the firſt bill was poſted up, and even taken down, that I was ſeen writing a certain large ſheet of paper, which however the witneſs would not poſitively ſwear to be the ſame as this produced in court, for it was unfiniſhed he ſays when he ſaw it.—It is true alſo, that the ſame witneſs heard me, in common with ſeveral others, read that, or ſome other paper nearly like that paper aloud, and thereby I preſume it will be ſaid that I publiſhed it.—But it is not true that all the queſtions put to him reſpecting a club in the Fleet-priſon by ingenious counſel were ſufficient to extort an anſwer ſufficient to prove a conſpiracy or agreement between the defendants.

Now taking it for granted, for argument ſake, that the large paper (not poſitively ſworn to by Schoole) was written and publiſhed by me, yet the Jury cannot condemn me upon the charges before them.—The firſt charge muſt be relinquiſhed with reſpect to me, becauſe no evidence thereon appears againſt me. The ſecond ſtates—and here I muſt ſet the counſel who opened this cauſe right; he ſaid the ſecond count dropped the charge of our conſpiring to eſcape and to liberate the other priſoners—the ſecond count only drops the idea of our conſpiring to eſcape, but charges us with contriving, deviſing, and intending to ſtir up others to eſcape, in order to effect which we publiſhed the wicked libel before charged.—Now, gentlemen, you have nothing to do but compare the wicked paper ſaid to be written by me, and which is the only one with which I can be ſuppoſed to have any concern, with the libel charged in the information, and you will find it to be of a tenor and effect different from what is ſtated in the information.—If it was proved by a cloud of unerring witneſſes that I wrote and publiſhed that paper, yet I could not be convicted of another offence on ſuch teſtimony. I am charged by the Attorney General with one thing, and another thing is attempted to be proved—what, gentlemen, can your verdict be?

Mr. Bearcroft aſked, if the two papers produced in court, one ſworn to have been ſtuck up by Duffin, and the other to have been read by Lloyd, were not verbatim et literatim the ſame?

Mr. Lloyd ſaid, they were not, and if gentlemen would take the trouble of peruſing them, they would diſcover a material difference.

Mr. Bearcroft deſired the defendant to point out where they differed.

Mr. Lloyd ſaid, if any perſon would hold one copy, he would read the other, and the variation would be diſcovered to every one preſent.

Mr,

Mr. Bearcroft. As you know in what the difference lies, point it out.

Mr. Lloyd then read the paper the witneſs Schoole had reference to in his teſtimony; and it appeared to vary from what was charged in the indictment by the addition and alteration of the words marked in Italics. "This houſe to let, peaceable "poſſeſſion will be given by the preſent tenants, on or before "the firſt day of January next, being the commencement of "the firſt year of liberty in Great Britain. The republic of "France having rooted out deſpotiſm, their glorious example "and *complete* ſucceſs againſt tyrants *render ſuch* infamous "Baſtilles no longer neceſſary in Europe."

Mr. Lloyd added, that the evidence of the Warden went only to repeat a converſation which took place four days ſubſequent to the time at which the information charged the publication of the libel, and was only remarkable for not proving any one circumſtance for which the defendant was now trying.—Inſtead of ſwearing that Lloyd owned himſelf the publiſher, the Warden ſwore he was deſired to take notice that he (Lloyd) did not admit himſelf to be any wiſe concerned in the tranſaction.———Here Mr. Lloyd reſted the merits of the cauſe.

The Chief Juſtice ſummed up the evidence, and allowed the validity of the objection taken by the defendant Lloyd, ſaying, that if the publication of the paper containing ſome ſmall variation from the libel charged in the information was the only thing exhibited againſt him, that the Jury muſt acquit him—but if the Jury were ſatisfied and believed that Lloyd was concerned with Duffin, in publiſhing the other paper paſted on the chapel door, they would find both the defendants guilty.

Mr. Lloyd took up the two hand-bills produced in court, and deſired the Jury to take them with them when they withdrew, in order to compare them with the charges in the information.

The Chief Juſtice ordered him to ſit down, ſaying, You have no right to dictate here.

Mr. Lloyd then requeſted the Judge to order the papers to be ſent with the Jury, ſaying, It was a matter of indifference to him whether he was allowed to hand them to the Jury, or whether it was done by the ſpecial order of the court—he only deſired, for the ſake of juſtice, that the thing might be done.

The Chief Juſtice ordered him to be quiet, and ſay no more.

During this altercation, the Jury had retired without the papers, and in a few minutes returned, and brought in their verdict—Both Guilty.

FINIS.

To THOMAS PINCKNEY.

IN your quality of MINISTER PLENIPOTENTIARY from the Government of the UNITED STATES of AMERICA, to that of GREAT BRITAIN, I addreſs to you the following repreſentation, requeſting you to take ſuch meaſures as in your judgment ſhall appear proper, to obtain for me the redreſs of the injuries I have ſuſtained.

I am a CITIZEN of the UNION of a ſtanding co-eval with its INDEPENDENCE. The following brief Narrative ſhews how I acquired that title.

I reſided in the Britiſh Colonies ſeveral years previous to the commencement of hoſtilities in 1775. Shortly after the battle of Lexington, I entered a volunteer into Captain Thomas's Independent Company, and ſerved in that capacity until the Flying Camp was diſbanded in 1776. Immediately upon this event, I was appointed an Enſign in the Fourth Maryland regiment: I continued with it in the field, until the 11th of September 1777, on which day the battle of Brandy-wine was fought. Toward the cloſe of the engagement, I was ſhot through the body, bayoneted, and in that condition taken by the enemy: I was however ſpeedily releaſed from the dreadful ſituation of being a priſoner. Whilſt an army is in motion, men deſperately wounded are an incumberance. Our army was in poſſeſſion of ſome of the enemy's wounded, as they were of ours. On a propoſition from General Waſhington, General Howe acceeded to an exchange of all in that condition: and by this liberation, I avoided a peſtilential priſon-ſhip, or a ſugar-houſe lazaretto. As ſoon as my cure was effected, I returned to my duty in the line. In 1779, I was attached to the Quarter-Maſter General's department under General Green, and employed in the middle diſtrict as Aſſiſtant Deputy Quarter-Maſter General, with the rank of Captain. In 1781, the office of Superintendant of Finance being eſtabliſhed by Congreſs, I entered into that department as Secretary to the Treaſurer, and continued therein until the BRITISH Government, was compelled to acknowledge our INDEPENDENCE by the treaty of Paris, ſigned the third of September, 1783. From that period I have reſided in Philadelphia, (where my family ſtill remain) and was the Editor of the debates of the Legiſlatures of Pennſylvania, New York, &c. until the meeting of Congreſs, under the NEW CONSTITUTION, formed in 1787, when I eſtabliſhed the Congreſſional Regiſter under the patronage of the Preſident of the United States, and the Members of the Senate and Houſe of Repreſentatives, and continued the ſame until laſt November was a twelvemonth, when I ſailed for Europe, in order to execute ſome private buſineſs, which I calculated might detain me from home for about two years.

During

During the war, I qualified myſelf for the various offices I filled, by taking the oath required for each reſpectively. In the year 1777, I took the oath of allegiance to the State of Pennſylvania, as by law enjoined, in order to become a citizen of that particular State. Thus I acquired the reſpectable character of an AMERICAN CITIZEN, which character I truſt I have hitherto honourably maintained.

That ones Citizenſhip is not brought into danger of forfeiture, by ones temporary abſence from ones nation, is the opinion of the beſt writers on the Law of Nations. In ſupport of this idea, I quote Vatel, Book II. Chap. viii. Section 107. where he writes thus:—" The Citizen, or the ſubject of a State, who abſents " himſelf for a time, without any intention to abandon the So- " ciety of which he is a Member, *does not loſe his privilege by* " *his abſence: he preſerves his rights*, and remains bound by the " ſame obligations." Nor can a nation abandon, but from neceſſity, a Citizen in ſuch a ſituation as the one in which I am placed; as the ſame Author obſerves in Book I. Chapter ii. Section 17. " The body of a nation cannot abandon a province, " a town, *or even a particular perſon who has done his part*, unleſs " obliged to it from neceſſity; or unleſs it is made neceſſary by " the ſtrongeſt reaſons founded on the public ſafety."

That generally the juriſdiction of a nation ought to be reſpected by other nations, is admitted; but there are exceptions, and it is on theſe exceptions that the preſent application is founded. The ſame enlightened writer judiciouſly ſtates this maxim in the words that follow, Book II. Chapter vii. Section 84. " The adminiſtration of juſtice neceſſary requires that " every definitive ſentence, *regularly* pronounced, be eſteemed " juſt, and executed as ſuch. As ſoon as a cauſe in which fo- " reigners find themſelves intereſted, has been decided *in form*, " the Sovereign of the defendants cannot hear their complaints. " To undertake to examine the juſtice of a definitive ſentence, " is to attack the juſtice of him who has paſſed it. The " Prince, (meaning, I preſume, the Sovereign) ought not to " interfere in the cauſes of his ſubjects in foreign countries, and " grant them his protection, *excepting in the caſe of a refuſal* " *of juſtice, palpable and evident injuſtice, a manifeſt violation of* " *rules and forms; or, in ſhort, an odious diſtinction made to the* " *prejudice of his ſubjects, or foreigners in general.*"

If now I ſhall be able to prove by a ſtatement of facts which I can authenticate, that not only the rules and forms of Britiſh law were diſpenſed with, in order to procure my conviction and puniſhment for a ſuppoſed libel, but that palpable and evident injuſtice was done me; that juſtice was refuſed me, even on what was allowed to be from the circumſtances of the caſe, due application, and that an odious diſtinction was made to my prejudice as a foreigner; I truſt; nay, I am convinced, that my country,

try, impelled by its love of juſtice, will interfere, and grant me its protection.

On the *Firſt* point, namely, that the rules and forms of law were diſpenſed with, I ſtate, that being brought up to the Court of King's Bench on the 21ſt of laſt November, to plead to an information filed *ex-officio* by the Attorney General, againſt Mr. Duffin and me, the Court refuſed to take the bail I tendered, and which were there preſent, or to let me return to whence they had brought me from, but ordered me, unheard, to be conveyed to Newgate, contrary to the eſtabliſhed cuſtom of proceeding in the caſe of libels upon information. That being brought up to the Crown-Office on the day of to be preſent at ſelecting 48 ſpecial jurors, I objected to ſuch a jury, on the ground of my being a foreigner, entitled by Statute 28th Edward III. Chapter xiii. enforced by 8th Henry VI. Chapter xxix. to a jury *de mediatate linguae*. On my being brought up a ſecond time, in order to be preſent at ſtriking the Special Jury, which the Officers had ſelected, I refuſed to have any thing to do in ſtriking ſuch a Jury, perſiſting in my claim of having a jury compoſed of half foreigners and half Britiſh ſubjects. The Solicitor proceeded *ex-parte*, ſo far as related to me, to ſtrike the Special Jury, (but Mr. Duffin, who was joined with me in the ſuit, ſtruck ſuch Jury for himſelf.) The Solicitor, however, finding me adhere to my objection, conſented to leave my claim open to the deciſion of the Court, when I ſhould be called to trial, unembarraſſed by any thing which had taken place at the Crown Office. That being brought up to trial on the 17th day of December 1792, the Court refuſed to conſider my claim, much leſs was it inclined to admit it, on the pretence that the time was elapſed when I ſhould have put it in, although it was the firſt thing I urged after I was permitted to enter on my defence. Theſe facts are not only ſufficient to eſtabliſh my firſt point, but go to prove alſo, that an odious diſtinction was made to the prejudice of a Citizen of the United States of America, for the claim to a Jury *de mediatate linguae* has been uniformly allowed, when made by a foreigner of any other nation.

My *ſecond* point, viz. that palpable and evident injuſtice was done to me, is manifeſt from a view of the charges, and the evidence adduced to ſupport them. The charges were two; firſt, that I had *conſpired* to eſcape from the Fleet priſon, &c.; ſecond, that I had publiſhed a *ſpecific* libel. The Counſel for the Crown avowedly gave up the firſt charge, immediately upon opening the caſe, and nothing was offered in teſtimony to ſhew, that Mr. Duffin and I ever had any intercourſe with each other, in any ſhape or manner whatſoever, either by ſpeech, or writing, or otherwiſe, without which it is impoſſible for any two men to *conſpire, combine, confederate und agree*, to any ſcheme whatever.

ever. With reſpect to the ſpecific libel charged, no evidence was produced to prove that I had ever ſeen or heard of it, either before or after its publication. But then another paper, containing writing which was ſuppoſed to be a *verbatim et literatim* copy of the libel was produced in Court, and a Mr. Schoole depoſed that he ſaw me writing a paper, which he believed to be the one produced in Court, but he would not be poſitive it was the ſame; and that I read the ſame aloud, and thereby publiſhed it—but both the writing and reading were four hours after the publication of the libel ſpecified in the information. When I ſtated to the Court that the writing contained in the paper ſworn to by this evidence was not of the *tenor* with the libel charged in the information, the Chief Juſtice felt himſelf bound to declare, that my exception was fatal as to the publ cation of the paper ſworn to by Schoole; but then, he added, in his charge to the Jury, that if they conſidered me to be any wiſe concerned with Mr. Duffin, in publiſhing the paper which was ſtated in the information, they would bring us both in guilty. I apprehend it was in conſequence of this direction, which pointed out the wiſh of the Court, and not in conſequence of the evidence, that I was found guilty by the Jury; for as I have already obſerved, no evidence was adduced to ſhew that I ever was concerned with Mr. Duffin in any tranſaction whatſoever. If a conviction of a conſpiracy to eſcape, when no proof was offered on that head; if a conviction of publiſhing a ſpecific libel, when evidence was brought forward only to prove the writing and reading of a paper not ſpecified, be not rendering one palpable and evident injuſtice, then I do not comprehend what ſuch terms imply.

Third. That juſtice, on due application, was refuſed. When I was brought up, on the 31ſt day of January 1793, to receive judgment, I claimed of the Court a new trial. The Chief Juſtice informed me, that this claim ſhould have been put in within the four firſt days of the term: but on my repreſenting that I had no agent to take ſuch a ſtep for me, and that I could not attend myſelf, being confined in Newgate on his expreſs order ever ſince he had refuſed my bail the 21ſt of November laſt, he conſented to wave the *laches*, and declared that the Court would, notwithſtanding, grant me a new trial, if I ſhewed ſufficient cauſe. I hereupon enumerated my objections to the former trial, as ſtated in my firſt and ſecond points; adding a ſhort ſtatement of the incompetence of the witneſs Schoole, who was known by the Chief Juſtice to have been ſtripped of his gown at the Iriſh bar, where he formerly exhibited as a Counſellor at law; and at the moment he gave teſtimony againſt me, he was under a proſecution for perjury; a bill of indictment had been found ſome time before by the grand jury, although he had contrived hitherto to evade his trial.

This

This latter circumſtance I mentioned as notorious, and in a peculiar manner, within the knowledge of each of the four Judges then ſitting on the bench viz. Kenyon, Groſe, Buller, and Aſhurſt. Yet, notwithſtanding theſe repreſentations, which wore on their face evident marks of their ſufficiency, a ſecond trial was denied me, and the Chief Juſtice declared that the Court was ſatisfied with the verdict of the former Jury. Is it not hereupon evident that Juſtice, on due application, was refuſed me?

Fourth and laſt. That an odious diſtinction was made to my prejudice as a foreigner. Judge Aſhurſt proceeded to pronounce ſentence upon Mr. Duffin and me; and in one part of his ſpeech, he took occaſion to expreſs the opinion of the Court; "That having ſhewn myſelf inimical to Kingly Government; (and this I conſtrue as applying to the part which I openly in the Court avowed that I had taken to oppoſe the unjuſt and tyrannic claims of the Britiſh King in America) that having alſo ſhewn little regard on my trial to the practices of the Courts of Law, and in ſhort evincing that determined and inflexible ſpirit which was obnoxious to the temper of the times, and the preſent ſtate of affairs, *the Court had agreed to make a difference in our puniſhments, although they ſaw no difference in our crimes!!*" In conſequence, a truly odious diſtinction was made: I was ſentenced to the pillory, three years impriſonment in Newgate, and to find ſureties for 1000l. for my good behaviour for five years; whilſt Mr. Duffin was ſentenced to *only* two years impriſonment in the New Compter, and to find ſureties in 200l. for his good behaviour for two years.

On this point, I have to ſtate further, that, that part of the ſentence which related to the pillory was put in execution the ninth day after ſentence; a circumſtance extremely unuſual. In all caſes of pillory and impriſonment, it is cuſtomary in Britain to delay the pillory, till the term of confinement is nearly expired. This cuſtom ariſes, no doubt, from motives of beneficence: the criminal conduct of the culprit is partly forgotten; the lenient hand of time has ſmoothed the brow of reſentment, and he ſuſtains a leſs degree of popular odium, than would have been ſhowered upon him, if his expoſure had inſtantly followed his conviction, while the public mind was yet irritated againſt him.

That even in the pillory, the rancour of the Government againſt me was ſtill viſible. Addreſſing myſelf to the numerous Citizens who ſurrounded me, I was pleaſed to find that they conſidered, as I did, that my puniſhment was inflicted for advocating the cauſe of liberty. They received with applauſe every ſentence I uttered. The Sheriffs, obſervant from their ſtation of all that paſſed, ordered me ſoon to be pinned down cloſe in that painful engine. Their mandate was obeyed with brutal force; while

while the people ſhewed their abhorrence of ſuch inhumanity by loud and repeated hiſſes! I remained about forty minutes in a ſituation little ſhort of ſtrangulation; my left hand was benumbed, and the blood ſettled black therein. Theſe circumſtances being perceived by an officer near me, he went to the Sheriffs (as he told me on his return) to obtain an order to eaſe the preſſure of the inſtrument; but they deſired him to requeſt me to bear the pain patiently, if poſſible, about ten minutes longer, (being the time unexpired of the hour I was to ſtand there) for they were afraid, from what they obſerved of the diſpoſition of the people, that it would produce a clamour of approbation, which might lead to a riot or inſurrection. Notwithſtanding the unneceſſary torture which was inflicted on me, the malignancy of Government could not have been much gratified on the occaſion. At a time of ſuch alarm as exiſted laſt winter, it had, no doubt, by an early expoſure of one who profeſſed himſelf openly, and on all occaſions, a REPUBLICAN, thought to have brought his principles into diſgrace. The people were expected to hiſs and abuſe him, and thereby ſhew the ſet of the tide of popularity: but how miſtaken!!! the popular voice was decidedly, was nearly unanimouſly in favour of his principles. He returned to Newgate amidſt the reiterated and unceaſing plaudits of thouſands of Engliſhmen, who were barely reſtrained by the moſt numerous *poſſe* of civil officers ever drawn together on ſuch an occaſion, from taking the horſes from the carriage, and turning what was intended as ignominy into a ſplendid triumph!

Perhaps it may be imagined that my ſentence is not definitive, becauſe an appeal lies to the Houſe of Lords; and that unleſs it be conſidered as definitive, the United States are not bound to interfere; for Vatel in the laſt quotation I made from him, ſpeaks only of a definitive ſentence. But is not that ſentence definitive which has been executed? and I have already ſuffered much the greateſt portion of the puniſhment intended. Again; when an appeal is to be conducted at a coſt beyond the ability of the appellant, is he not conſtrained to bear the injury? and I have it not in my power to defray the expence of bringing my caſe before the Houſe of Lords. From theſe circumſtances, it is manifeſt that the ſentence paſſed on me by the Court of King's Bench is completely deciſive: and that the UNITED STATES are bound to interfere on my behalf, upon this my ſolemn application, in order to obtain for me the redreſs of the injuries I have ſuſtained.

THOMAS LLOYD.

State ſide of Newgate priſon,
in the City of London, Great Britain.
October 14th, 1793.